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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

See 504

No. 79-528

AARON E. HENRY, ET AL.,
Appellants,

v.

STATE OF MISSISSIPPI

On Appeal from the United States District Court
for the District of Columbia

JURISDICTIONAL STATEMENT

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No. ———

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v.

STATE OF MISSISSIPPI

On Appeal from the United States District Court for the District of Columbia

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JURISDICTIONAL STATEMENT

Appellants, ten black citizens and registered voters of Mississippi, appeal from the final judgment of the United States District Court for the District of Columbia (three-judge court), entered June 1, 1979, granting a declaratory judgment pursuant to § 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, that the Mississippi Legislature's statutory legislative reapportionment plans, Miss. Code Ann. §§ 5-1-1, 5-1-3 (1978 Cum. Supp.), do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.

OPINIONS BELOW

The Findings of Fact and Conclusions of Law of the District Court for the District of Columbia are unreported and are attached hereto in the Appendix, p. 1a, *infra.*

The final judgment of the three-judge District Court for the Southern District of Mississippi of April 13, 1979, ordering into effect a final court-ordered legislative reapportionment plan in *Connor* v. *Finch* is reported at 469 F. Supp. 693.

JURISDICTION

The declaratory judgment of the District Court for the District of Columbia, approving the Legislature's plan under § 5 of the Voting Rights Act, was entered June 1, 1979. See Appendix pp. 30a-31a, *infra.* Appellants' notice of appeal was filed in the District Court on June 8, 1979. See Appendix pp. 32a-33a, *infra.* By order of the Chief Justice, dated August 30, 1979, the time for docketing this appeal was extended to and including September 29, 1979. This Court has jurisdiction of this appeal pursuant to 42 U.S.C. § 1973c. *Wilkes County, Georgia* v. *United States,* No. 78-70 (Dec. 4, 1978); *Beer* v. *United States,* 425 U.S. 130 (1976); *City of Richmond* v. *United States,* 422 U.S. 358 (1975).

QUESTIONS PRESENTED

Mississippi has an extensive past history of denial to blacks of equal access to the political process in state legislative elections. As a result of racially discriminatory election devices and redistricting schemes enacted by the Mississippi Legislature and ordered into effect by the Mississippi District Court, Mississippi—which is 37% black—at present has only five black representatives in the 122-member House of Representatives and only one black senator in the 52-member Senate. As a result of

the declaratory judgment rendered by the District Court here, the Legislature's statutory plan supersedes the settlement plan approved by a majority of both houses of the Mississippi Legislature, agreed to by all the parties, and ordered into effect in *Connor* v. *Finch*, 469 F. Supp. 693 (S.D. Miss. 1969), which was the existing plan at the time of the District Court's judgment here. The *Connor* settlement plan provides 49 black population majority districts and 39 black voting age population majority districts, while the legislative plan which supersedes it has only 46 black population majority districts and only 36 black voting age population majority districts. Further, the Legislature's statutory plan was enacted to preserve incumbent legislators—most of whom are white—in their respective districts and to avoid pitting incumbents against each other for reelection. The statutory plan in significant instances departs from the neutral guidelines established for redistricting, and fragments and dilutes black population concentrations in irregularly shaped districts in the face of alternatives which would have preserved black population concentrations intact and given black voters greater opportunities to elect candidates of their choice. Under these circumstances, the questions presented are:

1. Whether the District Court erred in holding that the State had met its burden of proving that the statutory plan was enacted without a racially discriminatory purpose.

2. Whether the District Court applied a proper legal standard on the purpose issue when it noted that the burden was on the State but then held that proof of discriminatory racial purpose is necessary for a finding of purpose proscribed by § 5 of the Voting Rights Act.

3. Whether the District Court erred in holding that the statutory plan would not have a racially discrimina-

tory effect and that the differences between the *Connor* settlement plan and the statutory plan were insignificant in the face of uncontradicted testimony of black voters affected by the redistricting that the differences were significant and on the basis of 1970 Census statistics of population and voting age population which were hopelessly out of date and which did not reflect current voting realities.

4. Whether the District Court correctly applied the principles of *Beer* v. *United States*, 425 U.S. 130 (1976), in holding that the statutory plan which has fewer majority black districts than the existing plan and which contains districts in which the black percentages are significantly lower than in corresponding districts in the existing plan was not retrogressive of black voting strength.

STATUTE INVOLVED

§ 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, provides in relevant part:

> Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, . . . such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, . . . and unless and until the court enters such judgment no persons shall be denied the right to vote for fail-

ure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, ... Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court.

STATEMENT OF THE CASE

A. Prior Proceedings: Connor v. Finch

The effort constitutionally to reapportion the Mississippi Legislature has occupied the attention of the Federal courts for 14 years, beginning with the filing in October, 1965 of *Connor* v. *Johnson* (now *Finch*) in the District Court for the Southern District of Mississippi. The plaintiffs in that case—eight black registered voters of Mississippi (one of whom is an intervenor here) and the Mississippi Freedom Democratic Party—challenged the existing 1962 legislative reapportionment for unconstitutional population variances and exclusion of black legislative representation.[1] The District Court invalidated that plan for unconstitutional malapportionment, *Connor* v. *Johnson*, 256 F. Supp. 962 (S.D. Miss. 1966), and failing constitutional legislative action ordered into effect its own plan which relied extensively on multi-member

[1] The defendants in *Connor* are the Governor of Mississippi, the State Attorney General, the State Secretary of State, and the presiding officers of the Mississippi House of Representatives and Senate. The United States was allowed to intervene as a plaintiff in June, 1975.

districts in both houses of the Mississippi Legislature, *Connor* v. *Johnson*, 265 F. Supp. 492 (S.D. Miss. 1967). Only one black representative was elected to the 122-member House of Representatives and no blacks were elected to the 52-member Senate in the 1967 state legislative elections.

In 1971 the Mississippi Legislature enacted another reapportionment plan based largely on multi-member legislative districts which was held unconstitutional by the Mississippi District Court because it could find no justification for the continuing population variances among districts. *Connor* v. *Johnson*, 330 F. Supp. 506 (S.D. Miss. 1971), *vacated and remanded sub nom. Connor* v. *Williams*, 404 U.S. 549 (1972). The District Court then formulated its own multi-member district plan for the 1971 legislative elections, but failed to formulate a final plan for Hinds, Harrison and Jackson Counties, the state's three largest counties, which were given interim multi-member representation. On an application for a stay, this Court held "that when district courts are forced to fashion apportionment plans, single-member districts are preferable to large multi-member districts as a general matter," and instructed the District Court "absent insurmountable difficulties" to devise a single-member district plan for Hinds County. *Connor* v. *Johnson*, 402 U.S. 690, 692 (1971). The District Court found insurmountable difficulties, however, and the multi-member districts remained in effect for the 1971 legislative elections. *Connor* v. *Johnson*, 330 F. Supp. 521 (S.D. Miss. 1971). All the black candidates were defeated in the 1971 legislative elections except the one first elected in 1967, who was reelected.

On the appeal on the merits, this Court declined to consider the prospective validity of the 1971 plan in the absence of a final plan for Hinds, Harrison, and Jackson Counties, and vacated the judgment and re-

manded the case to the District Court in reliance on the District Court's stated intention to appoint a Special Master in January, 1972, to consider single-member districting for those counties. *Connor* v. *Williams*, 404 U.S. 549 (1972). This Court directed that "[s]uch proceedings should go forward and be promptly concluded," 404 U.S. at 551-52, but no Special Master was appointed.

The Mississippi Legislature enacted a new plan in 1973 which was then superseded by a further plan enacted in 1975, which the District Court approved as constitutional. *Connor* v. *Waller*, 396 F. Supp. 1308 (S.D. Miss. 1975), *reversed*, 421 U.S. 656 (1975). On appeal, this Court reversed, holding that the legislative reapportionment plan could not be effective as law until it had been submitted and approved under § 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, and that the District Court accordingly had erred in considering its constitutional validity. *Connor* v. *Waller*, 421 U.S. 656 (1975). Mississippi then submitted the 1975 legislative plan to the United States Attorney General, who objected to the legislation for failure of the state to show that the plan did not have the purpose and would not have the effect of diluting black voting strength. The District Court then formulated another temporary plan for the 1975 elections which closely resembled the 1971 multi-member district plan, except that Hinds County and several other counties were subdivided into single-member districts. Three additional black representatives were elected from single-member districts in Hinds County, but again no black senators were elected.[2]

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[2] The District Court ruled that the senatorial districts in Hinds County should coincide with the five supervisors' districts which subsequently were held unconstitutional by the Fifth Circuit for fragmenting black voting strength and perpetuating a past denial to blacks of equal access to the political process. *Kirksey* v. *Board of Supervisors of Hinds County*, 554 F.2d 139 (5th Cir.) (*en banc*), *cert. denied*, 434 U.S. 968 (1977).

In January, 1976, the District Court entered a stay of proceedings on a permanent plan for the 1979 elections, and this Court allowed the filing of a petition for a writ of mandamus to compel the District Court to enter a final judgment embodying a permanent reapportionment plan for the Mississippi Legislature. *Connor* v. *Coleman*, 425 U.S. 675 (1976). The District Court then held hearings and adopted a final plan for both House and Senate based exclusively on single-member districts. *Connor* v. *Finch*, 419 F. Supp. 1072, 419 F. Supp. 1089, 422 F. Supp. 1014 (S.D. Miss. 1976), *reversed and remanded*, 431 U.S. 407 (1977).

On appeal, this Court reversed, holding that the District Court's plan failed "to meet the most elemental requirement of the Equal Protection Clause . . .—that legislative districts be 'as nearly of equal population as is practicable.'" 431 U.S. at 407-08. The Court also noted plaintiffs' claims of District Court departures from its own neutral guidelines "which have the apparent effect of scattering Negro voting concentrations" in "irregularly shaped districts when alternative plans exhibiting contiguity, compactness, and lower or acceptable population variances were at hand." *Id.* at 422. These departures "can lead . . . to a charge that the departures are explicable only in terms of a purpose to minimize the voting strength of a minority group," and the District Court was instructed to "either draw legislative districts that are reasonably contiguous and compact, so as to put to rest suspicions that Negro voting strength is being impermissibly diluted, or explain precisely why in a particular instance that goal cannot be accomplished." *Id.* at 425-26.

On remand, the District Court directed the parties to file new proposed court-ordered plans, and held hearings on those plans in November, 1977, and February, 1978.

Altogether, six proposed court-ordered plans were filed by the plaintiffs, the Department of Justice, the Mississippi Legislature, and the Special Master:

(a) Department of Justice precinct plan, based on voting precincts, filed October, 1977, revised February, 1978.

(b) Department of Justice Census enumeration district (ED) plan based on Census ED's, filed October, 1977.

(c) *Connor* plaintiffs' precinct plan, based on voting precincts, filed October, 1977, revised February, 1978, revised March, 1978.

(d) Mississippi Legislature's ED plan, based on Census ED's, filed October, 1977.

(e) Mississippi Legislature's precinct plan, based on voting precincts, filed March, 1978.

(f) Special Master W. D. Neal's precinct plan, filed May, 1978.

On June 12, 1978, after considering the various plans and objections filed, the District Court noted that "the differences among the various parties . . . are so narrow that they could easily be resolved among the parties themselves," and directed settlement discussions to explore the possibility of entry of a consent decree. Counsel for all the parties and for the Mississippi Legislature's Special Joint Legislative Committee on Reapportionment met for settlement negotiations from June through August, 1978, and reached agreement on a settlement plan. This settlement plan was based on the Legislature's statutory plan which is at issue in this case. In response to objections to the statutory plan lodged by the *Connor* plaintiffs and the Department of Justice, the boundaries

of approximately 20 districts in the House and 10 in the Senate were altered by the staff of the Joint Reapportionment Committee to remedy fragmentation and dilution of black voting strength in the statutory plan. The new district alignments were taken from or derived from the proposals submitted to the District Court earlier by the plaintiffs, the Department of Justice, and the Special Master.

The Legislature's Joint Reapportionment Committee then took a poll of the members of both houses of the Mississippi Legislature (the Legislature not being in session) in August, 1978, and a majority of both houses by a vote of 80 to 13 in the House and 26 to 7 in the Senate voted in favor of accepting the *Connor* settlement plan as an alternative to the statutory plan. After this poll, the Joint Reapportionment Committee accepted the settlement plan and recommended to the *Connor* defendants that they enter into a consent decree incorporating this settlement proposal.

On September 5, however, the signing of a consent decree was blocked when attorneys for the defendants insisted upon the inclusion in the consent decree of language providing that the *Connor* settlement plan could not be introduced in evidence in this case and could not be used in this case as a measure of whether the statutory plan at issue here was retrogressive of black voting strength.

In October, 1978 the *Connor* plaintiffs moved the District Court to enter judgment on the settlement plan despite the disagreement among the parties on the wording of a consent decree, and moved for special elections to remedy the discrimination in the temporary 1975 plan and to fill existing vacancies in the Legislature. In January, 1979, the District Court ordered into effect seven single-member districts for special elections to fill vacan-

cies in the House and Senate,[3] but again stayed proceedings and delayed entry of a permanent plan for the 1979 legislative elections. On March 26, this Court granted plaintiffs leave to file another petition for a writ of mandamus, and noting the imminence of the 1979 legislative elections directed the District Court forthwith and without further delay to adopt a final court-ordered reapportionment plan for the Mississippi Legislature. *Connor* v. *Coleman*, 59 L.Ed.2d 619 (1979).

On April 13, 1979, the Mississippi District Court adopted and ordered into effect for the 1979 legislative elections the settlement plan agreed to by the parties in the 1978 settlement discussions with a few minor variations to eliminate split precincts and to reduce population deviations. *Connor* v. *Finch*, 469 F. Supp. 693 (S.D. Miss. 1979). None of the majority black districts were affected by these changes, however. All the parties accepted the final *Connor* plan. Mississippi Attorney General A. F. Summer announced in open court that the state did not intend to take an appeal from the *Connor* court's final judgment. On the basis of representations that all the parties were satisfied and that no appeal would be taken from the District Court's final judgment, this Court then denied the petition for a writ of mandamus. *Connor* v. *Coleman*, 60 L.Ed.2d 646 (1979).

B. Proceedings Below: Mississippi v. United States

The statutory plans involved here, Miss. Code Ann. §§ 5-1-1, 5-1-3 (1972) (1978 Cum. Supp.) were enacted by the Mississippi Legislature and approved by the Governor on April 21, 1978, after the proposed court-ordered

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[3] An additional black representative, and the first black state senator since Reconstruction were elected in these special elections. At present, the 122-member House has only five black representatives, and the 52-member Senate has only one black senator in a State which is 37% black.

plans had been filed by the parties in *Connor* and after the February, 1978, *Connor* hearing. See Appendix pp. 34a, 54a, *infra*. They were submitted on June 1, 1978 to the United States Attorney General pursuant to § 5 of the Voting Rights Act of 1965. On July 31, the Attorney General entered a timely objection to these plans holding, *inter alia*, that the configuration of districts in a number of areas suggested a purpose to minimize black electoral influence. The Attorney General also noted that one purpose of the plans was to preserve the seats of white incumbents, and that there was no explanation why particular districts were adopted in the face of other available plans which appeared to provide greater opportunities for black representation.[4]

On August 1, 1978, the State of Mississippi filed this action, styled *Mississippi* v. *United States*, Civil No. 78-1425, in the United States District Court for the District of Columbia seeking a declaratory judgment pursuant to § 5 of the Voting Rights Act that the statutory plans did not have the purpose and would not have the effect of denying or abridging the right to vote on account of race or color. The defendants are the United States and Attorney General Griffin B. Bell. Appellants—ten black Mississippi voters adversely affected by the statutory plan—were granted leave to intervene in this action on September 18, 1978, and the District Court in its opinion of June 1, 1979 certified a defendant class consisting of all black citizens and black registered voters in Mississippi qualified to vote in state legislative elections (Conclusions of Law, ¶ 3). The case was tried on September 18 through 27, 1978.

On June 1, 1979, the District Court entered its Findings of Fact and Conclusions of Law, Appendix p. 1a ff.,

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[4] The text of the Attorney General's objection has previously been filed with this Court in *Connor* v. *Coleman*, No. 78-1013, Petition for Writ of Mandamus, Appendix C.

infra. The District Court found that there was an extensive past hisory in Mississippi of purposeful and intentional exclusion of black citizens from the political process (Findings of Fact, ¶ 33), that the effects of this past discrimination persist in disproportionately lower voter registration and political participation among blacks in the State (Findings, ¶ 34), and that racial bloc voting has prevailed and continues to prevail throughout the State today (Findings, ¶ 35). The District Court found that these factors make it necessary for an electoral district in Mississippi to contain a substantial majority of black eligible voters to provide black voters with an opportunity to elect a candidate of their choice, and held that barring exceptional circumstances (such as a split in the white vote), legislative districts should be at least 65% black in population or 60% black in voting age population to provide black voters with an opportunity to elect candidates of their choice (Findings, ¶ 36).

Past legislative elections, the court found, have been conducted on the basis of racially discriminatory multimember districts which have failed to meet constitutional requirements and which have tended to submerge black population concentrations in heavily white concentrations (Findings, ¶ 37). Mississippi also has a majority vote requirement to win party nomination in primary elections (Findings, ¶ 31). Consequently, at the time of trial, blacks were seriously underrepresented in the Mississippi Legislature, with only four blacks in the 122-member House of Representatives and none in the 52-member Senate (Findings, ¶ 39).

The District Court found that the statutory plan was drawn with the goal of preserving incumbent legislators in their respective districts and avoiding pitting incumbents against each other for reelection, and that this goal largely was accomplished with few exceptions (Findings, ¶ 14). The District Court also found that certain dis-

tricts in the House and Senate plans fragmented black population concentrations among several districts, or paired black population concentrations with heavier white population concentrations (Findings, ¶ 47). The court held, however, that the statutory plan was not enacted with a racially discriminatory purpose because the Legislature had hired outside experts to draft its plan, held public hearings on prior versions of the plan (based on Census ED's, rather than voting precincts), and acted with the benign purpose of creating majority black districts in a number of counties (Findings, ¶¶ 10, 13, 20-21, 48, Conclusions of Law, ¶ 22.

In measuring whether the statutory plan would have a racially discriminatory effect, the District Court concluded that the existing plan was the April, 1979 *Connor* settlement plan and that the *Connor* plan should be the benchmark in measuring the effect of the statutory plan (Conclusions of Law, ¶ 19). The District Court found that the statutory plan contained fewer majority black districts than the *Connor* plan (Findings, ¶ 49), but concluded that the differences were not significant (Findings, ¶ 49, Conclusions of Law, ¶ 20).

On June 1, 1979, the District Court entered an Order granting Mississippi's prayer for a declaratory judgment that the statutory plans do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.

Appellants applied to this Court on June 7 for a stay of the District Court's judgment, but the stay was denied by this Court on June 18. As a result, the August 7 party primaries have been held on the basis of the statutory plan.

C. The Connor Plan and the Statutory Plan

Neither the *Connor* plan nor the statutory plan provide black voters in Mississippi with opportunities for representation in proportion to their numbers. Missis-

sippi is 36.8% black in population and 31.5% black in voting age population (Findings, ¶ 32). In the *Connor* plan, only 28.16% of the districts are majority black in population, and only 22.41% of the districts are majority black in voting age population, while in the statutory plan only 26.44% of the districts are majority black in population and only 20.69% of the districts are majority black in voting age population. But the *Connor* plan does provide black voters with greater opportunities for the legislative representation which has been denied them for 14 years of litigation, and the statutory plan provides fewer opportunities for majority legislative representation.

The *Connor* plan represents the best efforts of all involved—the Mississippi Legislature, the members and staff of the Legislature's Joint Reapportionment Committee, representatives of the black voters of Mississippi, and the Department of Justice—to devise a single-member districting plan which complies with the requirements laid down by this Court in *Connor* v. *Finch*, 431 U.S. 407 (1977), to provide equality of population among the districts [5] and to avoid fragmenting or diluting black voting strength. The staff of the Joint Reapportionment Committee, in devising the statutory plan, also was instructed to comply with the requirements of the *Connor* decision (Findings, ¶ 12; Ex. P-31, Tr. 126, 463-64), and to avoid splitting up voting precincts and counties with enough population to create a single district (Findings, ¶ 12; Tr. 261-62, 412, 641-42). But no explanation was given at trial why the statutory plan in significant instances splits up black population concentrations, combines black population concentrations with heavier white concentrations, creates overly elongated

[5] The *Connor* plan has total population deviations of only 9.94% in the House and 11.34% in the Senate; the population deviations in the statutory plan are 10.08% in the House and 11.39% in the Senate.

and odd-shaped districts, or splits up an excessive number of voting precincts and counties with sufficient population to form a single district, as in the senatorial districts in Washington county.

House Districts

Hinds County. The *Connor* plan has five majority black VAP districts in Hinds County (Districts 67, 68, 69, 70, and 73, 469 F. Supp. at 717); the statutory plan has only four. District 73 in the *Connor* plan, which is 66.79% black in population and 59.02% black in voting age population, encompasses and does not fracture the black population concentration in the western portion of Hinds County.[6] The statutory plan splits up this heavy black population concentration among three elongated districts, all of which are over 60% white in voting age population, to deny black voters the opportunity to elect candidates of their choice (Tr. 956, testimony of Bolton Mayor Bennie G. Thompson).

The staff of the Joint Reapportionment Committee was aware of the *Connor* plaintiffs' objections to this alignment as early as December 1977 (Findings, ¶ 47(1)(b)), well before the plan was introduced in the Legislature. The District Court stated that the number of majority black districts in Hinds County was reduced from five to four at the request of a black legislator. But the record clearly indicates that the eliminated fifth district was a marginal district *within Jackson*, and was not this majority black district in western Hinds County (Tr. 396-97). The District Court also stated that in order to create this majority black district, the black percentages of adjacent districts would have to be reduced. However, since none of the adjacent districts in

[6] This *Connor* plan district was available to the Legislature as early as October, 1977, in the proposed plan filed in *Connor* by the plaintiffs (Ex. D-I-42).

the statutory plan are winnable by black voters, there was no excuse not to create this majority black House district in western Hinds County. In the August Democratic primary a black candidate in District 74 in the statutory plan—George Wayne Daniel (who is not a party and did not testify)—lost overwhelmingly to the white incumbent.

Warren County. The *Connor* plan has one majority black VAP district in Warren County; the statutory plan has none. District 56 in the *Connor* plan includes the black population concentration in north Vicksburg and northern Warren County in a district which is 60.99% black in population and 56.22% black in voting age population (469 F. Supp. at 714).[7] The statutory plan fragments this black population concentration up among three odd-shaped majority white VAP districts, turning a black majority into a black minority in all three districts. The record reveals that the *Connor* plaintiffs objected to this gerrymander in December, 1977 (Tr. 712-13, testimony of Chairman Thomas Campbell of the Joint Reapportionment Committee).

The District Court determined that this majority black district was not winnable for black voters because it fell below the 60% VAP figure necessary for black voters to elect candidates of their choice. This finding is clearly erroneous. The record indicates that a black alderman was elected to the Vicksburg City Council from the area in Vicksburg encompassed by this district in 1977 (Tr. 828). Further, the District Court ignored the fact that it was dealing with stale 1970 Census data which were nine years old. In the August, 1979 Demoratic primaries, three black candidates won races in legis-

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[7] This district closely resembles and was derived from the *Connor* plaintiffs' plan available to the Legislative in October, 1977 (Ex. D-I-42).

lative districts which, according to 1970 Census data, were less than 60% black in voting age population.[8]

Leflore County. The District Court itself found that the statutory plan fragments and dilutes black voting strength in Leflore County, while the *Connor* settlement plan keeps black voting strength intact:

> "Defendants and intervenors complain that the statutory plan fragments the southeast Greenwood black concentration. The greatest portion of that black community is paired with heavily white north Greenwood in a white majority district. The remaining black community is put in a predominantly rural district, which, although majority black, does not have a high enough black VAP to enable blacks to elect candidates of their choice. The settlement plan keeps the black population concentration in south Greenwood intact (except for one heavily black ED) and entirely within one legislative district." Findings of Fact, ¶ 47(1)(d).

Intervenor David Jordan, President of the predominantly black Greenwood Voters League, the most active black political organization in Leflore County, testified that black voters would be able to elect candidates of their choice in the *Connor* plan district, but not in the statutory plan district because of low political participation and dilution of black voting strength in that district (Tr. 1008-12). In the August, 1979 Democratic primary Mr. Jordan ran for the Legislature in the majority black district in the statutory plan and was defeated.

Adams County. The *Connor* plan district gives black voters an opportunity to elect candidates of their choice

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[8] They were David Green in House District 98 (57.07% black VAP), Percy Watson in House District 104 (52.28% black VAP), and Charles Young in House District 84 (51.41% black VAP). The apparent explanation is that since the 1970 Census, blacks have been migrating into urban areas in search of jobs, better housing, etc., thus increasing the black populations of Mississippi cities such as Vicksburg, Hattiesburg, and Meridian.

in District 95, which is 69.40% black in population and 66.45% black in voting age population (469 F. Supp. at 721). The statutory plan splits up this black population concentration (Findings of Fact, ¶ 47(1)(c)), and substantially reduces the black population to 63.23% and the black voting age population to 60.63%, thus giving black voters less of an opportunity to elect candidates of their choice than under the *Connor* plan.[8a]

Marshall County. *Connor* plan District 5 preserves the black population concentration in a majority black supervisors' district in western Marshall County intact with the result that blacks comprise 67.31% of the population and 62.04% of the voting age population of that district (469 F. Supp. at 705). The statutory plan, however, splits up this black population concentration, and combines with it predominantly white Holly Springs Precinct No. 5, thus diluting black voting strength. As a result, blacks comprise only 61.66% of the population and only 56.02% of the voting age population in House District 5 in the statutory plan, which—by the very same standards employed by the District Court in Warren County—deprives black voters in Marshall County of the opportunity to elect candidates of their choice to the Legislature in the statutory plan.

Senate Districts

Holmes and Humphreys Counties.[9] The *Connor* plan combines these two continguous, heavily black counties—from which Mississippi's first black legislator in modern

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[8a] Although under ordinary circumstances the statutory plan tends to minimize black voting strength, this year a black candidate will be elected. No white candidate qualified to run and both the Republican and Democratic nominees are black.

[9] In the District Court, and in our application for a stay, intervenors objected to the configuration of Senate District 28 in Hinds County, the "seahorse district," in the statutory plan. We now withdraw that objection in light of black candidate Henry J. Kirksey's defeat of the white incumbent in the August primary.

times was elected—in a district which is 67.11% black in population and 59.86% black in voting age population (469 F. Supp. at 698). The statutory plan splits them up among three overly elongated districts. Eastern Holmes County is put in a white majority district, Humphreys County is placed in a marginally black district with a black voting age population of only 51.15%, and the rest of Holmes County is connected to Madison County—with which it is not contiguous except at a point—where white population growth since 1970 makes it difficult if not impossible for black voters to elect candidates of their choice (Tr. 1380-1406).

Washington County. Senate District 14 in the *Connor* plan preserves intact the heavy black population concentration in north Greenville and the northern portion of Washington County in a compact district which is 61.95% black (469 F. Supp. at 696) and in which black voters would be able to elect candidates of their choice (Tr. 1097-98, testimony of Greenville attorney Johnnie E. Walls). This district is included entirely within Washington County. The statutory plan departs from the neutral guidelines supposedly followed by the Legislature, splits Washington County between two long, narrow districts which include counties to the south, and fragments this heavy black concentration between the two districts to deprive black voters of the opportunity to elect candidates of their choice (Tr. 1095-97, Walls testimony). In the August, 1979 Democratic primary, black candidate Charles Victor McTeer ran for the Senate in District 23 in the statutory plan—which has a black VAP of only 55.74%—and was defeated.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

I. THE DISTRICT COURT ERRED IN HOLDING THAT THE STATUTORY PLAN WAS ENACTED WITHOUT A RACIALLY DISCRIMINATORY PURPOSE.

A. The District Court Employed an Erroneous Legal Standard on the Purpose Issue.

The District Court in the early portions of its Conclusions of Law employed the correct standard when it held that Mississippi, in meeting its burden of proof, must demonstrate that a racially discriminatory purpose was not among the factors that motivated it in devising its reapportionment plan. *Richmond* v. *United States*, 422 U.S. 358, 362 (1975). Conclusions of Law, ¶ 11. But subsequently, in paragraph 21 of its Conclusions of Law, the District Court contradicted its earlier statement that the burden was on the State by equating the "purpose" standard of § 5 with the Fourteenth Amendment standard and holding that proof of a discriminatory racial purpose is necessary for a finding of "purpose" under § 5:

> "21. Legislative reapportionment plans must be scrutinized to determine if they were enacted with the prohibited 'purpose' of denying or abridging black voting strength. The prohibited 'purpose' of section 5 may be described as the sort of invidious discriminatory purpose that would support a challenge to official action as an unconstitutional denial of equal protection. A law neutral on its face and serving legitimate state ends cannot be held invalid under the Equal Protection Clause without proof of discriminatory purpose. Accordingly, in examining the statutory plan, proof of discriminatory racial purpose is necessary for a finding of the 'purpose' proscribed in section 5. *Washington* v. *Davis*, 426 U.S. 229, 239-48 (1976)."

Application of this standard is manifestly erroneous, because it puts the burden of proof of showing racially discriminatory purpose on those challenging the reapportionment plan, rather than on the State to prove that the proposed plan is free of a racially discriminatory purpose, as § 5 requires. *Beer* v. *United States*, 425 U.S. 130, 140 (1976); *City of Richmond* v. *United States*, 422 U.S. 358, 362 (1975); *Georgia* v. *United States*, 411 U.S. 526, 538 (1973); *South Carolina* v. *Katzenbach*, 383 U.S. 301, 335 (1966). Application of this erroneous legal standard goes to the heart of § 5 of the Voting Rights Act, by which Congress intended

> " 'to shift the advantage of time and inertia from the perpetrators of the evil to its victim; by 'freezing election procedures in the covered areas unless the changes can be shown to be nondiscriminatory.' " *Beer* v. *United States*, *supra*, 425 U.S. at 140, quoting from H.R. Rep. No. 94-196, pp. 57-58 (footnotes omitted).

Application of this erroneous legal standard fatally infects the District Court's findings of fact on the purpose issue, because it accepted the conclusory testimony of plaintiffs' witnesses that the Legislature acted with a benign purpose (Conclusions of Law, ¶ 22), and did not require plaintiffs' witnesses to justify the fragmentation and dilution of black voting strength in the odd-shaped districts challenged by defendants and the intervenors.

B. The District Court Erred in Evaluating the Evidence Showing Racially Discriminatory Purpose.

The District Court concluded that the defendants and defendants-intervenors failed to introduce any evidence that the Legislature acted with a racially discriminatory purpose (Conclusions of Law, ¶ 22). This is an error of momentous proportions, and the District Court's judg-

ment on this issue must be reversed. Intervenors and defendants presented extensive evidence that the staff and Chairman of the Legislature's Joint Reapportionment Committee, who had the primary responsibility for drafting the statutory plan and for seeing it through the Legislature, knew that the statutory plan districts deprived black voters of the opportunity to elect candidates in a number of counties and knew that there were alternative configurations which would avoid dilution of black voting strength. For example, the testimony clearly indicates that Committee staff member Thomas Hofeller (in charge of the House plan) and Committee Chairman Campbell knew that the proposed statutory plan districts in Warren and western Hinds County fragmented and split up black population concentrations among white majority districts (Tr. 438-39, 710-13), and that there were alternative configurations available which preserved these black population concentrations intact (Tr. 339-45, 702, 710-13). But nevertheless, knowing all this, the Committee failed to make any changes in the statutory plan which would remedy these dilutions of black voting strength (Tr. 440, 713). Committee staff director Rick Fortenberry similarly knew of objections to dilution of black voting strength in Senate districts, particularly to splitting up Holmes and Humphreys Counties, but no changes were made as a result of those objections (Tr. 513-18, 533).

The Mississippi Legislature was not drawing legislative districts in a vacuum. Individual legislators surely knew where black population concentrations existed in their individual districts. Under these circumstances, the Legislature must have intended the necessary and foreseeable results of its district configurations.

Similarly, the District Court shrugged off (Conclusions of Law, ¶ 23) the very damaging admission by Chairman Campbell that a "goal" of the Legislature was to avoid

pitting incumbents against each other in every instance in which this could be done (Tr. 707). The evidence clearly indicates that pursuit of this "goal" resulted in the fragmentation of the black population concentration in western Hinds County among three House districts (Tr. 955-57) and the fragmentation of the black population concentrations in northern Washington County among two uncompact Senate districts (Tr. 494), and the rejection of alternative configurations which would have preserved black voting strength but would have pitted incumbents against each other (*id.*).

Instead of requiring Mississippi's witnesses to justify the numerous departures from the Legislature's own neutral guidelines and the extensive dilution of black voting strength in the statutory plan, the District Court put the onus on the victims of the discrimination. Thus, despite the extensive objective evidence from Census data and maps that the statutory plan districts fragmented black voting strength,[10] the District Court—without any hard evidence to support it—attributed intervenors' objections to selfish political motives (see Findings of Fact, ¶ 47 n. 3). In fact, several of the intervenors, including Bennie G. Thompson, Johnnie E. Walls, Jr., and Rep. Fred L. Banks, were not candidates this year in the legislative districts about which they testified, and no intervenors ran this year in several districts to which objections were lodged. Further, the District Court erroneously faulted the intervenors for not objecting, or not objecting soon enough, to the dilution about which they complained at trial. For example, the District Court held that the intervenors did not complain about the Warren County districts until the January 10, 1978 deposition of Mr. Hofeller in the *Connor* case, after the statutory plan had been finalized (Findings, ¶ 47(1)(a)).

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[10] Copies of these exhibits are attached to our application for a stay, *Henry* v. *Mississippi*, No. A-1067, October Term, 1978.

This is clearly erroneous—the record clearly indicates that Chairman Campbell was aware of the objections of black voters to these districts in December, 1977, before the plan was introduced in the Legislature (Tr. 710-13).

In holding that the statutory plan was enacted without a racially discriminatory purpose, the District Court applied an erroneous legal standard on the burden of proof, and erred in evaluating the evidence showing a racially discriminatory purpose.

II. THE DISTRICT COURT ERRED IN HOLDING THAT THE STATUTORY PLAN WOULD NOT HAVE A RACIALLY DISCRIMINATORY EFFECT.

A. The District Court Employed an Erroneous Legal Standard on the Effect Issue.

The District Court correctly held that the effect issue was governed by this Court's decision in *Beer* v. *United States*, 425 U.S. 130 (1976), in which this Court held that the purpose of the effect provision of § 5 was "to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Id.* at 141. The District Court erred, however, in holding that

> "slight differences are not of such significance to find that the statutory plan is retrogressive with respect to black voting strength in Mississippi as it exists today. * * * This conclusion to disregard insignificant differences is further supported by the fact that legislative reapportionment is the preferred vehicle for reapportionment, as is reflected by the broader tolerances which are allowed to legislatures, but not to courts, in the matter of deviations from uniform population requirements." Conclusions of Law, ¶ 20.

This conclusion that slight differences cannot be retrogressive conflicts with the very purpose of § 5 and with this Court's decision in *Beer*. In enacting § 5, this Court held in *Beer*:

> "Congress desired to prevent States from 'undo[ing] or defeat[ing] the rights recently won' by Negroes. H.R. Rep. No. 91-397, p. 8. Section 5 was intended 'to insure that [the gains thus far achieved in minority political participation] shall not be destroyed through new [discriminatory] procedures and techniques.' S. Rep. No. 94-295, p. 19." *Beer* v. *United States, supra*, 425 U.S. at 140-41.

As early as *Allen* v. *State Board of Elections*, 393 U.S. 544, 566 (1969), this Court held:

> "The legislative history on the whole supports the view that Congress intended to reach any state enactment which altered the election law of a covered State in even a minor way."

This Court has never countenanced the view that there are degrees of retrogression, and that a loss of one or two districts in which black voters under the existing plan could elect candidates of their choice would be "insignificant." Implicit in this Court's opinion in *Beer* itself is the notion that a loss of one majority black district from the existing plan would constitute a retrogression prohibited by § 5. Indeed, the District Court's decision, if affirmed by this Court, would allow a retrogression of black voting strength by a steady erosion of small numbers of majority black districts so that after several years or decades of reapportionment minority voters would end up with no representation at all.

Nor has this Court ever endorsed the proposition embraced by the District Court in this Conclusion of Law that "broader tolerances" are allowed legislatures to dilute black voting strength than courts. Once the Dis-

trict Court had chosen as its benchmark for retrogression the court-orderd plan in *Connor*, it was precluded from holding that the statutory plan has "broader tolerances" to discriminate because it was legislatively enacted.

B. The District Court Erred in Evaluating the Evidence Showing Racially Discriminatory Effect.

The District Court erred in holding that the differences between the *Connor* plan and the statutory plan are insignificant. The District Court looked at the gross statistics and found that difference in majority black districts between the *Connor* plan and the statutory plan constituted only a small percentage of the total number of districts (174) (Findings of Fact, ¶ 49). This statistical exercise ignores the realities of the differences between the two plans. A comparison of the House plans alone shows that the *Connor* plan has 34 majority black districts, while the statutory plan has only 30, a difference of 13.33% in the number of majority black districts.

More significantly, the uncontradicted testimony of the black voters of Mississippi who have more knowledge of local conditions than the District of Columbia District Court—but which was disregarded by the District Court in its opinion—showed that black voters would have opportunities to elect candidates of their choice in *Connor* plan House districts in Hinds, Warren, Leflore, Adams, and Marshall Counties, and Senate districts in Holmes-Humphreys and Washington Counties, which were taken away with the enactment and approval of the statutory plan. On this record, the statutory plan deprives black voters of the opportunity to elect candidates of their choice in five House districts and two Senate districts, which—given the extensive past history of exclusion of minority representation—amounts to a significant retrogression of black voting strength. Although the District Court did not have the evidence of the August primaries before it when it rendered its decision, this testimony

is buttressed by the defeats of black legislative candidates in statutory plan House districts in Hinds and Leflore Counties, and in a Washington County Senate district.

Further, in applying a strict 65% black population—60% black VAP measure of voting strength significance, the District Court neglected to acknowledge that the 1970 Census data upon which it relied was nine years old and not necessarily a reliable measure of present day voting realities. Thus, the District Court held that the splitting up of a 56% black VAP district (1970 Census) in Warren County was not significant because the district was less than 60%. But the finding ignores the testimony that in 1977 a black aldermanic candidate won in a city election in an equivalent district, and is no longer valid in light of the fact that three black candidates won House races in the August primaries in districts which were less than 60% black in voting age population according to 1970 Census data.

Moreover, the District Court did not even uniformly apply its own 65%-60% standard. It rejected intervenors' Warren County challenge for the reason that the statutory plan did not reduce a 60% black VAP district to less than 60%, but then failed to accept intervenors' challenge to the Marshall County districts in the statutory plan when they did.

The District Court's findings that the differences between the *Connor* plan and the statutory plan are insignificant are clearly erroneous. The record taken as a whole indicates that there are significant differences between the two plans, and that the ability of black voters to participate in the political process and to elect candidates of their choice to the Mississippi Legislature is significantly diminished by approval of the statutory plan.

CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

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September 29, 1979

APPENDIX

APPENDIX

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 78-1425

[Filed June 1, 1979]

STATE OF MISSISSIPPI,

Plaintiff,

vs.

UNITED STATES OF AMERICA and GRIFFIN B. BELL, ATTORNEY GENERAL OF THE UNITED STATES, individually and in his official capacity,

Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This action was heard upon plaintiff's request for declaratory relief pursuant to section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c. It concerns the validity of the Mississippi Legislature's statutory legislative reapportionment plan, Miss. Laws, 1978, Chs. 515 and 535, H.B. 1491 and S.B. 3098, enacted in March, 1978. The hearing took place September 18-27, 1978, at which a record of more than 1500 pages of oral testimony was compiled and more than 80 exhibits received in evidence. The matter has been extensively briefed by all parties. Based on this record of the evidence presented and on the applicable law, we make the following findings of fact and conclusions of law.

FINDINGS OF FACT

I. *Factual and Procedural Background*:

1. In 1965, private plaintiffs filed a complaint entitled *Connor* v. *Johnson* in the Southern District of Mississippi

(hereinafter referred to as "the *Connor* Court") challenging the constitutionality of Mississippi's 1962 legislative reapportionment plan for the Mississippi Legislature. The 1962 plan, as well as successive legislative attempts to redistrict Mississippi's legislature for the 1967 and 1971 elections, were held unconstitutional by the District Court. *Connor* v. *Johnson*, 330 F. Supp. 506 (S.D. Miss.), *supplemented in* 330 F. Supp. 521 (S.D. Miss. 1971); *Connor* v. *Johnson*, 265 F. Supp. 492 (S.D. Miss. 1967); *Connor* v. *Johnson*, 256 F. Supp. 962 (S.D. Miss. 1966). Consequently, court-ordered plans were implemented for the 1967 and 1971 elections.

2. In April, 1975, the Mississippi Legislature again attempted a reapportionment plan. The 1975 plan, although approved by the District Court, was declared ineffective by the Supreme Court until precleared pursuant to section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c. *Connor* v. *Waller*, 421 U.S. 656 (1975). The Court's decision was without prejudice to a ruling by the *Connor* Court ordering the 1975 plan into effect if no other plan was formulated in time for the 1975 elections. *Id.* at 656-57.

3. On June 9, 1975, Mississippi submitted its 1975 reapportionment plan to the Attorney General for section 5 preclearance, and on June 10, 1975, the Attorney General interposed an objection to the plan.

4. On June 25, 1975, the *Connor* Court announced its intention to formulate a "temporary plan for the election of Senators and Representatives for the 1975 elections." *Connor* v. *Waller*, Civ. No. 3830 (S.D. Miss. June 25, 1975). Then, by orders of July 8 and July 11, 1975, the *Connor* Court ordered into effect an apportionment plan for the 1975 quadrennial election (hereinafter referred to as the "1975 court-ordered plan"). The 1975 quadrennial election in the Mississippi House and Senate, held in

accordance with the 1975 plan, resulted in the election of the current Mississippi Legislature.

5. On November 18, 1976, the *Connor* Court formulated an apportionment plan to take effect for the 1979 quadrennial election. *Connor* v. *Finch*, 419 F. Supp. 1072, 1089 (S.D. Miss.), *supplemented in* 422 F. Supp. 1014 (S.D. Miss. 1976) (hereinafter referred to as the "1976 court-ordered plan").

6. On May 31, 1977, the Supreme Court held that the 1976 court-ordered plan was unconstitutional on malapportionment grounds and returned the matter to the District Court with instructions to draft a new plan for the 1979 elections. *Connor* v. *Finch*, 431 U.S. 407 (1977). The Court cautioned the District Court on remand to draw legislative districts that were reasonably contiguous and compact or to explain precisely why, in a particular instance, that goal could not be accomplished. *Id.* at 425-26.

7. On August 2, 1977, the *Connor* Court directed the parties and invited the Mississippi legislature to file proposed plans for its consideration.

8. On August 9, 1977, the Governor of Mississippi called a special session of the legislature to consider the establishment of a joint legislative committee for the formulation of a legislative reapportionment plan.

9. At the August special session of the legislature, a Special Joint Committee on Reapportionment (hereinafter referred to as "the Joint Committee") was created and State Representative Thomas Campbell was elected its chairman. The Joint Committee retained as its special counsel, Mr. Jerris Leonard of Washington, D.C., former Assistant Attorney General of the United States for Civil Rights.

10. For the purpose of formulating the proposed plan, the Joint Committee interviewed experts on apportion-

ment recommended by the Attorney General of Mississippi, Jerris Leonard, and Marshall Turner, Assistant Chief of the Demographic Census Staff of the United States Bureau of the Census. Of those interviewed, the Joint Committee selected Mr. Thomas Hofeller of California, Dr. Delbert Dunn of Georgia, Mr. Calvin Webb of New York, and Dr. Richard Morrill of the State of Washington. Each of those selected had prior experience in the formulation of reapportionment plans.

11. In addition to those experts selected from outside the state, the Joint Committee hired Earl Fortenberry, formerly the Director of the Legislative Services Office of the State Senate, as Director of the Joint Committee's staff. Mr. Fortenberry had previously participated in the development of reapportionment plans for the Mississippi Senate. Fortenberry in turn hired as staff five people, including two blacks who were graduate students at Jackson State University, to assist with the efforts of the Joint Committee staff.

12. In formulating the plan, Joint Committee experts and staff were instructed by Special Counsel Jerris Leonard to minimize population deviations among districts, to avoid diluting black voting strength, to create one complete district in counties whose populations were large enough for the election of a representative or senator, to avoid splitting a county into more than two segments unless two or more districts could be derived from the same county, and to create compact and contiguous districts.

13. To avoid dilution of black voting strength, staff experts looked at the general demographic makeup of the state and noted that, as a general rule, black concentrations of population existed in western portions of the state. They further noted that, with certain exceptions, counties in the eastern portion of the state contained significantly fewer blacks. The experts tried to avoid

the combining of counties in the western portion of the state, which contained heavy black population concentrations, with counties from the eastern portion of the state containing heavy white population concentrations. This goal was accomplished by running the district lines from north to south rather than from east to west.

14. Avoiding dual incumbencies was another goal which the Joint Committee attempted to achieve so long as it could be accomplished while observing the criteria given to the Committee staff for devising the plan. Hofeller and Fortenberry first prepared the plan without regard to incumbency. When requests for changes emanating from a dual incumbency situation arose, solutions were checked to assure that they did not adversely impact established criteria, especially those concerning the maintenance of *de minimus* deviation and avoidance of dilution of black voting strength. As a result of changes made in the plan to avoid dual incumbency, 46 senators and 106 representatives were preserved in their respective districts while 6 senators in three districts and 16 representatives in eight districts were pitted against other incumbents for reelection.

15. The Joint Committee developed a computer data base for the plan derived from 1970 census data acquired from the Bureau of the Census. The Joint Committee chose 1970 census data because it provided neutral data considered to be as accurate as possible, available for the entire state, collected by similar methodology throughout the state, available for geographic areas within counties as well as for whole counties in the state, and easily replicated and verified for any given district or area.

16. The Joint Committee initially based its plan upon Census Enumeration District Lines (ED's) rather than precinct lines. After developing the ED plans for the House and Senate, the Joint Committee submitted the plans to the *Connor* Court. Both the Legislature and the

Court expressed a preference for a plan using precinct lines as a means of avoiding voter confusion and of eliminating the need for reregistration of voters.

17. Because of the preference expressed for precinct lines, the Joint Committee staff was directed to convert the ED plan to a precinct plan by moving the boundaries of districts based on EDs to the nearest precinct line.

18. In order to convert the plans to precinct plans the Joint Committee found it necessary to obtain data on the EDs when split by precinct lines. The Joint Committee staff would draw the "split" of an ED on a Census Bureau map of the ED and forward the map to the Census Bureau. The Census Bureau would return population figures for both sides of the line splitting the ED. The Census Bureau, however, could not provide the exact racial composition of the split. This was determined by a computerized proportional allocation of black and white population within the ED to each side of the "split" line.

19. The resulting shift from the ED-based plan to a precinct-based plan was primarily a matter of refinement. It is not disputed that the basic configurations of the districts contained in the original ED plan and those of the resulting precinct plan are thus essentially the same.

20. The process used in developing the Joint Committee's plan was open to public participation and input. On October 11, 1977, the Joint Committee conducted public hearings on those plans presented to the District Court in *Connor*, and, on November 28, 1977, the Joint Committee conducted hearings on its statutory ED plan. No hearings were conducted on the precinct plan subsequently drawn from the ED plan. The hearings of October and November, 1977, were well publicized in advance and opportunity was afforded to all interested parties to submit their suggestions and objections.

21. The Joint Committee was responsive to those suggestions ultimately submitted. Suggestions were incorporated into the plan whenever the resulting redistricting was feasible in view of other criteria governing the formulation of the plans.

22. After months of consultation, the House plan as drafted by Hofeller and the Senate plan as drafted by Fortenberry were adopted by the Joint Committee and were introduced on the floor of the legislature. These two plans, submitted as H.B. 1491 and S.B. 3098 (hereinafter referred to as the "statutory plan") were adopted without floor amendment.

23. On April 21, 1978, the Governor of Mississippi approved and signed into law the two bills, S.B. 3098 and H.B. 1491, (Mississippi Laws, 1978, Chapters 535 and 515).

24. In June, 1978, the District Court in *Connor* directed the parties to confer for the purposes of arriving at a settlement of the *Connor* v. *Finch* litigation pending in the Southern District of Mississippi. The Joint Committee participated in these negotiations. In response to the objections to the statutory plan by the *Connor* plaintiffs, the boundaries of a number of districts in the plan were altered by the staff of the Joint Committee and a settlement proposal was submitted to the Joint Committee. The Joint Committee then informally polled the members of the Mississippi Legislature (the Legislature not being in session) to determine whether this settlement proposal was acceptable. In August, 1978, a majority of both houses of the Mississippi Legislature by a vote of 80 to 18 in the House and 26 to 7 in the Senate voted in favor of accepting the *Connor* settlement plan as an alternative to the statutory plan. After this poll, the Joint Committee accepted the settlement plan and recommended to the defendants in *Connor* that they enter into a consent decree incorporating this settlement proposal.

25. On June 1, 1978, the Attorney General for the State of Mississippi, submitted the statutory plan to the Attorney General of the United States for federal preclearance pursuant to section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c. By letter of July 31, 1978, the Attorney General, by his designated agent Drew S. Days, III, the Assistant Attorney General in charge of the Civil Rights Division, rendered a timely objection pursuant to section 5 of the Voting Rights Act stating that "we have been unable to conclude that the submitted plans for the Mississippi Senate and House of Representatives do not have the purpose or effect of abridging the right to vote because of race or color." Letter from Drew S. Days, III, to Mississippi Attorney General A. F. Summer, July 31, 1978.

26. On August 1, 1978, Mississippi's Attorney General received, by telephone, notification of the Attorney General's objection. The same day, the State of Mississippi filed this action against the United States and Attorney General Griffin B. Bell seeking a declaratory judgment pursuant to section 5 of the Voting Rights Act.

27. On August 31, 1978, ten black citizens and registered voters of the State of Mississippi filed a motion to intervene as defendants and attached to their motion their proposed answer denying the material allegations of the complaint, denying that plaintiff was entitled to the relief requested, and alleging as an affirmative defense that the statutory plans "would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the franchise" in violation of their rights secured by section 5 of the Voting Rights Act, and further that the statutory reapportionment plan dilutes, minimizes, and cancels out black voting strength in violation of intervenors' rights secured by the Thirteenth, Fourteenth, and Fifteenth Amendments to the United States Constitution. On September 18, the

Court granted intervenors' motion for leave to intervene and to file their answer in intervention (order of September 18, 1978). As stated previously, this matter was subsequently heard during the weeks of September 18 through September 27. After proposed findings of fact and conclusions of law with accompanying briefs had been submitted, oral argument was conducted on January 16, 1979.

28. On March 26, 1979, the Supreme Court, upon a motion to seek a writ of mandamus, instructed the *Connor* court to issue a reapportionment plan forthwith, in accordance with its previous mandate in *Connor* v. *Finch*, 431 U.S. 407 (1977).

29. On April 13, 1979, the Southern District of Mississippi issued a final judgment in *Connor* v. *Finch* and adopted a slightly modified version of the settlement plan previously submitted to the court by the parties. It is undisputed that the resulting court-ordered plan is not substantially different from the settlement plan from which it was drawn.[1]

II. *Present Voting Conditions in Mississippi*:

30. Pursuant to its Constitution, Mississippi has maintained a bicameral legislature made up of a Senate and a House of Representatives. Members of each branch are elected quadrennially. The Constitution of Mississippi requires that the Senate consist of no less than 45

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[1] The court-ordered plan of April 13, 1979, while not in existence at the time this Court heard this case, is a matter of judicial notice. Throughout these Findings of Fact and Conclusions, it is treated as substantially identical to the settlement plan and has been so conceded by all paries. Defendant United States' letter to the Court of April 17, 1979 ("Substantially the same as the settlement plan"); Defendant-intervenors supplemental memorandum of April 27, 1979 ("The court-ordered plan of April 13, 1979 orders the settlement plan into effect 'with three minor changes' which do not affect 'any of the majority black districts in the settlement plan.'").

but not more than 55 members. Similarly, the Mississippi Constitution requires that the House consist of no more than 122 members. The Senate currently consists of 52 members and the House consists of 122.

31. Any registered voter in Mississippi can have his or her name placed upon the ballot as an independent candidate in the general election for the Mississippi legislature by presenting a petition to the appropriate body designated in the statute signed by 50 registered voters 60 days before the quadrennial general election. Miss. Code Ann. § 3260 (1972). To be elected, a candidate thus nominated needs only a plurality in a general election, Miss. Code Ann. § 3279 (1972 & Supp. 1978) *as amended* by H.B. 44 (Chapter 429, Mississippi Laws 1978). A candidate for party nomination, on the other hand, must win a majority of the votes cast in order to win the nomination of his party. Miss. Code Ann. § 23-3-69 (1972).

32. According to the 1970 census, blacks in Mississippi comprise 36.8 percent of the total population of the state and 31.5 percent of the state's voting age population (hereinafter referred to as "VAP").

33. Mississippi has in the past used such devices as the literacy test, the poll tax and the white primary to exclude its black citizens from participation in the electoral process. Indeed, until passage of the Voting Rights Act in 1965, use of racially discriminatory tests and devices effectively excluded black people in Mississippi from exercise of the franchise. *Stewart* v. *Waller*, 404 F. Supp. 206 (N.D. Miss. 1975) (three-judge court) (per curiam); *United States* v. *State of Mississippi*, 229 F. Supp. 925, 983, 987 (S.D. Miss. 1964), *rev'd and remanded*, 380 U.S. 128 (1965).

34. The effect of Mississippi's past history of racial discrimination in voting and other areas continues to

affect black people in many portions of the state today, which has resulted in a generally lower participation by blacks than whites in the political process. Consequently, proportionally fewer blacks are registered to vote than whites, and black voters turn out at the polls at a lower rate than white voters.

35. Analysis of past election returns show that racial block voting has prevailed throughout the State of Mississippi. Those participating in the electoral process suggest that racial bloc voting continues to occur throughout the state today.

36. Low black voter registration and voter turn-out combined with racial bloc voting make it necessary for an electoral district in Mississippi to contain a substantial majority of black eligible voters in order to provide black voters with an opportunity to elect a candidate of their choice. It has been generally conceded that, barring exceptional circumstances such as two white candidates splitting the vote, a district should contain a black population of at least 65 percent or a black VAP of at least 60 percent to provide black voters with an opportunity to elect a candidate of their choice.

37. Recent legislative reapportionments in Mississippi have failed to meet constitutional requirements and have been marked by the racially discriminatory use of multi-member districts. *Connor* v. *Williams*, 404 U.S. 549 (1972); *Connor* v. *Johnson*, 402 U.S. 690 (1971). Such uses of multi-member districts have, in the past, tended to submerge black population concentrations in heavily white concentrations.

38. The present legislature in Mississippi was elected pursuant to a 1975 temporary court-ordered plan containing multi-member districts.

39. Only four out of 122 house seats in the Mississippi legislature today are occupied by blacks. None of the 52 senate seats is occupied by blacks.

III. *Nature of the Statutory Plan*:

40. Viewing the state as a whole, and comparing the statutory plan with the demographic distribution of population among Mississippi's 82 counties, the evidence demonstrates that the plan, in overall statistical effect, reflects the geographic distribution of black population within the state.

41. The maximum deviation of S.B. 3098 is 11.39 percent. The maximum deviation of H.B. 1491 is 10.8 percent. These are consistent with the broader tolerances allowed legislatures, but not courts, in fashioning apportionment plans.[2]

42. Mississippi's counties are unequal in population. While 30.5 percent of Mississippi's counties have a majority of black population, only 25.2 percent of the state's population live in those counties. 30.8 percent of the senate districts in S.B. 3098 have black majority populations. This percentage closely corresponds to the number of counties that have a majority black population.

43. 24.6 percent of the house districts have a majority black population. The percentage of black majority districts in H.B. 1491 is lower than the percentage of black majority districts in S.B. 3098 (30.8%) and the corresponding percentage of black majority counties (30.5%). Senate districts and counties, however, are larger geographically than the 122 house districts. The smaller house districts in H.B. 1491 contain greater densities of

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[2] Comparison of total deviations from population equality of the statutory plan with the settlement plan.

	Senate	House
State's Statutory Plan	11.39%	10.08%
Connor Settlement Plan	11.39%	9.94%

Total deviation, as used herein, is the total span of variances calculated by adding the largest plus variance and the largest minus variance.

black population than do the larger geographic units. Black majority house districts in H.B. 1491 average 65.4 percent in black population while the corresponding figure for counties is 60.77 percent and for senate districts in S.B. 3098 is 59.3 percent.

44. The statutory plan enhances potential black voting strength when compared to the 1975 court-ordered plan. The statutory plan contains two more black VAP majority districts in the senate (10) and four more black VAP majority districts in the house (26) than the 1975 court-ordered plan. It also contains two districts in the senate with a black VAP of 60 percent or more and ten more districts in the house (14) with a black VAP of 60 percent or more. Furthermore, the statutory plan contains single-member districts only.

45. A statistical comparison of the 1975 court-ordered plan with the statutory plan demonstrates the following with regard to black voting age populatin (VAP):

% Range	1975 Plan (No. of Dists House)	H.B. 1491 (No. of Dists House)	1975 Plan (No. of Dists Senate)	S.B. 3098 (No. of Dists Senate)
40-100%	40	38	14	16
45-100%	30	30	12	14
50-100%	22	26	8	10
55-100%	11	20	1	7
60-100%	4	14	0	2
65-100%	3	7	0	0
70-100%	3	3	0	0
75-100%	2	0	0	0
80-100%	1	0	0	0
86-100%	0	0	0	0

46. The following table contains statistical comparison of the statutory plan with the settlement plan adopted by the *Connor* Court on April 13, 1979, broken down to show the number of black majority districts and

black VAP majority districts for both the Senate and the House:

	Connor Settlement Plan (Ex. P-35)	State's Statutory Plan (Exs. P-4A 4B)
Black Pop. Majority Districts	49	46
Black VAP Majority Districts	39	36
HOUSE		
Black Pop. Majority Districts	34	30
65% +	18	15
60%-65%	5	6
55%-60%	5	5
50%-55%	6	4
Black VAP Majority Districts	28	26
65% +	9	7
60%-65%	6	7
55%-60%	7	6
50%-55%	6	6
SENATE		
Black Pop. Majority Districts	15	16
65% +	3	4
60%-65%	4	3
55%-60%	5	5
50%-55%	3	4
Black VAP Majority Districts	11	10
65% +	1	0
60%-65%	0	2
55%-60%	6	5
50%-55%	4	3

IV. *Defendant and Defendant-Intervenors' Objections to the Statotury Plan*:

47. Defendant and defendant-intervenors object, in particular, to the redistricting in the statutory plan of the following counties: [3]

		STATUTORY PLAN			
		SENATE		HOUSE	
NAME	COUNTY	POP.	VAP	POP.	VAP
Aaron Henry	Coahoma	same	same	same	same
Henry Kirksey	Hinds	65.44	62.93	same	same
Bennie Thompson	Hinds	42.01	35.41	46.30	39.21
Barney Schoby	Adams	same	same	63.23	60.63
David Jordan	Leflore	same	same	42.89	37.72
Fred Banks	Hinds	65.44	62.93	same	same
		SETTLEMENT PLAN			
Aaron Henry	Coahoma	same	same	same	same
Henry Kirksey	Hinds	72.33		same	same
Bennie Thompson	Hinds	49.71		66.79	59.02
Barney Schoby	Adams	same	same	69.40	66.45
David Jordan	Leflore	same	same	75.77	71.72
Fred Banks	Hinds	72.33		same	same

1. *HOUSE PLAN*

(a) *Warren County*

The defendants and intervenors complain that, in the statutory plan's redistricting of Warren County, a heavy black population concentration is divided among three proposed house districts, turning a black majority into a

[3] We note that several of the defendant-intervenors find themselves in districts more heavily black under the *Connor* Settlement Plan than under the statutory plans. This fact, in addition to defendant-intervenors' preference for reapportionment by Court decree rather than reapportionment by the legislature, may largely provide the explanation for their intervention in this litigation. (See testimony of Aaron Henry, Tr. pp. 801-02).

black minority in all three districts. This expression of concern regarding the statutory configuration of Warren County was first reflected in the record during the January 10, 1978 deposition of Hofeller. This configuration was in draft form at the time of the public hearings and no objection had been raised. By that time, however, expert Hofeller's discretion was limited to simply converting the ED plan into a precinct plan. The opportunity to make basic changes to the configuration of districts was no longer open. The settlement plan, which addresses the problem, is thus only a marginal improvement insofar as blacks are concerned, a difference which would not translate into a difference in black representation. The Warren County districts in the settlement plan also remain below the 60% black VAP requisite for districts in which blacks are able to elect a candidate of their choice.

(b) *Hinds County*

The defendants and intervenors complain that the black population concentration in western Hinds County is fragmented, and the resulting three portions of that concentration are paired with greater white population concentrations in Clinton and the Jackson suburbs. In the settlement plan, the boundaries of the three districts that trisect rural Hinds County do not fracture the black concentration in the western portion of the county. As a result, the settlement plan provides a district in rural Hinds County with a 69 percent black VAP. Representative Buckley, a black member of the Joint Committee from Hinds County and the other three black house members from Hinds County, apparently never raised the question of a majority black rural district prior to the legislature's action. The present objections to the redistricting of Hinds County were not brought to the Committee's attention until December, 1977. The Joint Committee originally intended to follow existing districts

in the 1975 plan, which had been approved by the federal court, and to increase the number of black VAP districts from 3 to 5. Representative Buckley objected that such a plan would spread the black population too thinly. In response to Buckley's objection, the plan was changed by reducing the number of black majority seats to four. The enhancement now sought by the defendants and intervenors is of debatable benefit and departs from the traditional plan approved by the federal court, which drew lines from east to west rather than north to south. In addition, in order to create the black VAP in rural Hinds County, the settlement plan necessarily dilutes adjacent districts.

(c) *Adams County*

Defendants and intervenors object to the statutory plan's redistricting of Adams County because the only majority black supervisor's district is split between two districts. The black voting strength in north Adams is allegedly diluted by excluding the majority black airport precinct from the north Adams district and by pairing north Adams and north Natchez with heavily white precincts. In the settlement plan, the two legislative districts that bisect Adams County leave the only black supervisor's district intact and entirely within the same legislative district, *i.e.*, district 95.

In a memorandum to the Legislative Committee on Reapportionment written by an associate of defendant-intervenors' counsel on behalf of Representative Buckley (hereinafter referred to as the "Barber Memorandum"),[4] Buckley requested a slight shift in the configuration of district 95. In response to Buckley's request, the Committee increased the black VAP in that district, but did

[4] The vast majority of the suggestions contained in the Barber Memorandum was incorporated in the statutory plan. See plaintiff's reply brief, pp. 43-45 for detail.

not realize that intervenors would not be satisfied unless the Morgantown precinct were eliminated. The resulting increase of five percent in the black VAP of Adams County by excluding the Morgantown precinct, however, would be at the expense of diluting neighborhood districts.

(d) *Leflore County*

Defendants and intervenors complain that the statutory plan fragments the southeast Greenwood black concentration. The greatest portion of that black community is paired with heavily white north Greenwood and a white majority district. The remaining black community is put in a predominantly rural district, which, although majority black, does not have a high enough black VAP to enable blacks to elect candidates of their choice. The settlement plan keeps the black population concentration in south Greenwood intact (except for one heavily black ED) and entirely within one legislative district. The districts proposed in the settlement plan, however, are less compact to a considerable degree than the districts in the statutory plan and would also divide the city of Greenwood to a greater extent. The settlement plan increases the black VAP percentage from 64.26 percent to 71.22 percent, while it diminishes the influence of the blacks residing in the adjacent district.

(e) *Marshall County*

Defendants and intervenors object that the statutory plan for Marshall County splits the only supervisors' district which has elected a black supervisor in that county and that the voting strength of the black voters in the county's house district is diluted and minimized by the inclusion of the heavily white Holly Springs precinct No. 5. In the settlement plan, the black supervisors' district is placed almost entirely within district 5 with the result that blacks comprise 62 percent of the VAP. Prior to

voicing these objections, however, the intervenors had indicated to the Committee a preference for keeping the city of Holly Springs intact. The configuration now preferred by the intervenors would split the city of Holly Springs. The sole difference between the plans lies in the allocation of one precinct. The result sought by the intervenors would create a district with a black VAP 6 percentage points higher. This gain is at the expense of creating an irregular shaped district that splits the only major city in the district.

(f) *Desoto County*

Defendants and intervenors contend that the statutory plan avoids the creation of a black population majority district in Desoto County by dividing the county by a north/south boundary. The plan splits up the rural predominantly black portion of the county and includes in each district portions of the heavily white Memphis suburban area in north Desoto County. In the settlement plan, the black population concentration in rural Desoto is left intact. As a result, a majority black population district is created. The settlement plan, however, increases the black voting age population in the district it seeks to change by only 1.8 percent and fails to create a 50 percent black VAP majority. The record does not reflect when, if ever, this particular change was called to the attention of the legislature. Intervenors' initial plan, which they submitted to the *Connor* Court, is identical in its configuration of Desoto County as the statutory plan.

2. *SENATE PLAN*

(a) *Hinds County*

Defendants and intervenors contend that the statutory plan forms a "seahorse district" in its Hinds County Senate plan that pairs a portion of the central black popula-

tion with the heavily white south Jackson area. They contend that alternative plans proposed to the *Connor* Court are more compact and form black populations of over 60 percent in districts 25 and 26. There is no evidence that this change was ever called to the attention of the Committee prior to the enactment of the statutory plan. In any event, the change sought merely increases the black population in an already 60 percent black majority VAP district, a change of dubious benefit to black representation.

(b) *Holmes, Madison and Humphreys Counties*

Defendant and intervenors complain that out-migration of blacks in recent years from the Holmes, Madison and Humphreys County has resulted in decreasing the actual VAP percentage in the statutory plan's redistricting of the area to less than 60 percent. The settlement plan combines Holmes and Humhpreys counties and the northern portion of Yazoo County. Defendants and intervenors contend that this configuration is more compact and would provide black voters with a better chance to elect a candidate of their choice. The record does not reflect any evidence that the requested combination of these counties in a single district was called to the attention of the Committee staff at any time prior to the passage of the statutory plans. In any event, the settlement plan would split Madison County across the middle and would dilute the vote in Yazoo County and in north Madison. The change would result in a net decrease of one 60 percent black VAP majority district.

(c) *Washington, Sharkey and Issaquena Counties*

Defendants and intervenors contend that the statutory plan splits the heavy black concentration in north Greenville and north Washington County between two long, narrow districts, which stretch south for more than 60

miles. The resulting district 22 is majority white, and district 23, although majority black, is alleged to be so diluted that black voters are denied representation of their choice. The settlement plan creates a district that preserves much of the black population in urban Greenville intact within one district. Defendants and intervenors argue that although the settlement plan's district is only about 2 percentage points greater in black majority VAP, it provides voters with a much better opportunity to elect a candidate because it comprises an urban area where blacks are generally better organized and more politically aware. Intervenor's expert testified that any district drawn in this area would look suspicious because of the small population in the rural areas. The drafters of the statutory plans attempted to draw a more compact plan than the predecessor 1975 plan. The resulting change increases the black VAP in one district by 1.42 percent. We find that the changes in the settlement plan are not significantly different from those created by the statutory plan or ameliorative of the problem of formulating compact districts in the area.

(d) *Claiborne, Jefferson and Copiah Counties*

Defendants and intervenors object to the statutory plan's pairing of Jefferson and Claiborne counties with majority white Franklin County and the western half of Copiah County. Alternative plans submitted to the *Connor* Court excluded Franklin County or portions of Copiah. The *Connor* plaintiff's plan combined Jefferson and Claiborne with Copiah to form a district with a 55 percent black VAP. Under the statutory plan, however, the Jefferson and Claiborne County districts have a 75.77 percent black population. The intervenors conceded in their Barber Memorandum to the Joint Committee that the Claiborne/Jefferson area could not be hurt by either plan because of its high black voting age population.

48. The evidence demonstrates that the plaintiff's agents in formulating the statutory plan did not act with the intent or purpose of denying or abridging the right to vote of any citizen of Mississippi on account of race. Rather, the individuals involved in drafting and enacting the statutory plans acted with the purpose of creating black VAP majority districts.

49. The evidence demonstrates that differences in black voting strength provided in the statutory plan and in the *Connor* settlement plan are insubstantial. The statutory plan covering both the Senate and the House contains three (3) less black majority voting districts.[5] Since there are 174 districts in the Mississippi legislature this is an overall difference of 1.7 percent (1.7%). For the Senate, the statutory plan contains one (1) more black majority district than the *Connor* settlement plan. More important, both plans provide the *same* number (16) of black, VAP majority districts with a population of 60 percent or more (see Finding 36 for the significance of this fact and Table in Finding 46 for critical figures). When compared to the settlement plan adopted by the *Connor* Court on April 13, 1979, the legislative plan is not retrogressive in overall black voting strength and does not have the effect of abridging or denying the right to vote of any citizen of Mississippi on account of race.

CONCLUSIONS OF LAW

1. This Court has jurisdiction to hear and determine this case. Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c (1974 & Supp. V 1975); 28 U.S.C. § 1396(a)(2) (1976); 29 U.S.C. § 2001 (1976).

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[5] In these three districts, the black majority is less than 60 percent VAP. As "influence districts," they, standing alone, do not represent a significant difference, according to the Assistant Attorney General of the United States for Civil Rights, such as to suggest an improper purpose under section 5 (Day's depo. Pltff's Ex. 25, Tr. pp. 112-115).

2. This Court has been properly convened as a court of three judges. Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c (1974 & Supp. V 1975) (hereinafter "section 5"); 28 U.S.C. § 2284 (1976).

3. All the requirements for a Rule 23(a) and 23(b)(2) defendants class action on behalf of the intervenors are met. The defendant class is defined as all black citizens and black registered voters in Mississippi qualified to vote in state legislative elections. Fed.R. Civ.P. 23(a) & 23(b)(2).

4. The Voting Rights Act of 1965, 42 U.S.C. § 1973 *et seq.* (1974), was enacted to insure the protection of rights guaranteed by the Fifteenth Amendment and "to rid the country of racial discrimination in voting." *South Carolina* v. *Katzenbach*, 383 U.S. 301, 315 (1966).

5. Section 5 of the Voting Rights Act was intended to insure that the gains thus far achieved in minority political participation would not be emasculated or destroyed through new discriminatory procedures and techniques. S. Rep. No. 94-295, at 19.

6. The State of Mississippi is a state subject to the preclearance requirements of section 5. 30 Fed. Reg. 9897 (August 7, 1965).

7. Under section 5, Mississippi may not enforce or implement any change in "any voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting" unless such change has either been approved by the Attorney General, or unless Mississippi obtains a declaratory judgment in the United States District Court for the District of Columbia that such change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. § 1973c (1974 & Supp. V. 1975).

8. The reapportionment plan adopted by the Mississippi Legislature in 1978 regular session, approved by the Governor on April 12, 1978, and the changes resulting therefrom are within the scope of Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c (1974 & Supp. V. 1975); *Georgia* v. *United States*, 411 U.S. 526, 531-35 (1973); *Beer* v. *United States*, 425 U.S. 130, 138 (1966).

9. In an action for declaratory judgment under section 5, the burden of proof is on the plaintiff. *Georgia* v. *United States*, 411 U.S. 526, 538 (1973); *South Carolina* v. *Katzenbach*, 383 U.S. 301, 328 (1966).

10. Plantiff's burden in a suit for declaratory relief under section 5 is to demonstrate that the reapportionment plan described in S.B. 3098 and H.B. 1491 do not lead to a retrogression in the position of racial minorities, or that the proposed change fairly reflects the strength of black voting power as it exists. *Beer* v. *United States*, 425 U.S. 130, 139 n. 11, 141 (1976); *Richmond* v. *United States*, 422 U.S. 358, 362 (1975).

11. Mississippi, in meeting its burden of proof, must demonstrate that a racially discriminatory purpose was not among the factors that motivated it in devising its reapportionment plan. *Richmond* v. *United States*, 422 U.S. 358, 362 (1975).

12. A discriminatory purpose need not be express, but may be inferred from the totality of the relevant facts. *Washington* v. *Davis*, 426 U.S. 229, 241 (1976).

13. Black voting strength is impermissibly diluted when, designedly or otherwise, an apportionment scheme under the circumstances of a particular case would operate to minimize or cancel out the voting strength of racial elements of the voting population. *Burns* v. *Richardson*, 384 U.S. 73, 88 (1966); *Fortson* v. *Dorsey*, 379 U.S. 433, 439 (1965).

14. In a single-member districting plan, black voting strength may be unconstitutionally and impermissibly diluted, minimized, and cancelled out (1) when heavy black population concentrations are unnecessarily fragmented and dispersed, and (2) when black population concentrations to deny black voters the opportunity to elect candidates of their choice. *Connor* v. *Finch*, 431 U.S. 407, 421-25 (1977); *Kirksey* v. *Board of Supervisors of Hinds County, Mississippi*, 554 F.2d 139, 149 (5th Cir.) (en banc), *cert. denied*, 434 U.S. 968 (1977); *Robinson* v. *Commissioners Court, Anderson County, Texas*, 505 F.2d 674, 679 (5th Cir. 1974); *Moore* v. *Leflore County Board of Election Commissioners*, 502 F.2d 621, 622-24 (5th Cir. 1974); *Sims* v. *Baggett*, 247 F. Supp. 96, 109 (M.D. Ala. 1965) (three-judge court).

15. No state or political subdivision is required to search for ways to maximize the number of black voting age population districts. Likewise, no racial group has a constitutional or statutory right to an apportionment structure designed to maximize its political strength. *Richmond* v. *United States*, 422 U.S. 358, 370-72 (1975); *Gilbert* v. *Sterrett*, 509 F. 2d 1389, 1394 (5th Cir. 1975); *Cousins* v. *City Council of the City of Chicago*, 503 F.2d 912, 920 (7th Cir. 1974); *Turner* v. *McKeithen*, 490 F. 2d 191, 197 (5th Cir. 1973); *Howard* v. *Adams County Board of Supervisors*, 453 F.2d 455, 458 (5th Cir. 1972).

16. A legislative reapportionment plan that enhances the position of racial minorities with respect to their effective exercise of the electoral franchise cannot have "the effect" of diluting or abridging the right to vote on account of race within the meaning of section 5 unless the new apportionment itself so discriminates as to violate the Constitution. *Beer* v. *United States*, 425 U.S. 130, 141 (1976).

17. Although reapportionment plans, which are formulated with less concern for statistical accuracy and

the one-person-one-vote concept, may provide a greater number of black majority districts, departure from equal protection one-person-one-vote strictures cannot be required or justified simply as an affirmative act to maximize black voting strength. *See Regents* v. *Bakke*, 98 S. Ct. 2733, 2751 (1978); *Mahan* v. *Howell*, 410 U.S. 315, 328-30 (1973); *White* v. *Weiser*, 412 U.S. 783, 790-93 (1973).

18. *Beer* commands comparison with a preexisting plan to determine "whether the ability of minority groups to participate in the political process and to elect their choices to office is augmented, diminished, or not affected by the change affecting voting . . ." *Beer* v. *United States*, 425 U.S. 130, 141 (1976).

19. The settlement plan, adopted by the *Connor* Court on April 13, 1979, must now be considered the preexisting plan and the benchmark with which to compare the statutory plan.[6]

20. When compared with the *Connor* Settlement Plan, and taking into account the totality of criteria governing the formulation of the statutory plan and its alternatives, we conclude that the slight differences are not of such significance to find that the statutory plan is retrogressive with respect to black voting strength in Mississippi as it exists today. The proof in this case demonstrates that H.B. 1491 and S.B. 3098 would not lead to a retrogression in the current position of racial minorities with respect to their effective exercise of the

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[6] When compared with the 1975 plan, S.B. 3098 and H.B. 1491 constitute a clear enhancement of the position of racial minorities with respect to their effective exercise of the electoral franchise because S.B. 3098 and H.B. 1491 have a greater number of black voting age majority district than did the 1975 plan and they provide higher percentages of black voting strength in those districts than did the 1975 plan. Moreover, the statutory plan is the first plan to utilize single-member districts only and avoids the diluting effect of multi-member districts.

electoral franchise and therefore do not have the "effect of denying or abridging the right to vote on account of race or color." This conclusion to disregard insignificant differences is further supported by the fact that legislative reapportionment is the preferred vehicle for reapportionment, as is reflected by the broader tolerances which are allowed to legislatures, but not to courts, in the matter of deviations from uniform population requirements. As the Supreme Court recently stated, "The Court has repeatedly held that redistricting and reapportioning legislative bodies is a legislative task which the federal Courts should make every effort not to preempt." *Wise* v. *Lipscomb*, 437 U.S. 535, 539 (1978).

21. Legislative reapportionment plans must be scrutinized to determine if they were enacted with the prohibited "purpose" of denying or abridging black voting strength. The prohibited "purpose" of section 5 may be described as the sort of invidious discriminatory purpose that would support a challenge to official action as an unconstitutional denial of equal protection. A law neutral on its face and serving legitimate state ends cannot be held invalid under the Equal Protection Clause without proof of discriminatory purpose. Accordingly, in examining the statutory plan, proof of discriminatory racial purpose is necessary for a finding of the "purpose" proscribed in section 5. *Washington* v. *Davis*, 426 U.S. 229, 239-48 (1976).

22. Mississippi's evidence demonstrates that the principal actors in the development of S.B. 3098 and H.B. 1491 acted with a benign purpose.[7] Defendants concede they have no evidence to the contrary and are unable to name anyone they contend acted with improper purpose.

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[7] The basic configuration of the statutory plan was complete in December, 1977, well prior to the submission to the *Connor* Court of various alternative plans, which culminated in the settlement plan adopted by the *Connor* Court on April 13, 1979.

Defendant-intervenors, likewise, have failed to introduce such evidence.

23. Defendants and defendant-intervenors have suggested that incumbency concerns in the fashioning of the legislature's plans resulted in an impermissibly racially-discriminatory purpose. It is not improper, however, for a legislative body to consider incumbency in fashioning a reapportionment plan, nor does it demonstrate invidiousness, especially here where the evidence shows incumbency concerns were not permitted to encroach upon configurations designed to recognize and protect black voting strength. *White* v. *Weiser*, 412 U.S. 783, 797 (1973); *Burns* v. *Richardson*, 384 U.S. 73, 89 n. 16 (1966).

24. The implementation of S.B. 3098 and H.B. 1491 for the 1979 quadrennial legislative elections in the State of Mississippi will not have either the purpose or effect of denying or abridging the full and free exercise of the right to vote of black citizens in that state.

25. Plaintiff's prayer for a declaratory judgment preclearing S.B. 3098 and H.B. 1491 as a valid reapportionment plan for use in the 1979 quadrennial election should be granted.

26. Since the statutory plan is upheld, it shall supersede the *Connor* Court plan of April 13, 1979. *Per curiam* opinion of the United States Supreme Court in *Connor* v. *Coleman*, No. 78-1013 decided March 29, 1979, 47 U.S.L.W. 3634.

An order consistent with the foregoing Findings of Fact and Conclusions of Law has been entered this day.

/s/ Malcolm Richard Wilkey
United States Circuit Judge

/s/ J. H. Pratt
United States District Judge

/s/ [Illegible]
United States District Judge

June 1st, 1979.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 78-1425

[Filed Jun. 1, 1979, James F. Davey, Clerk]

STATE OF MISSISSIPPI,

Plaintiff,

vs.

UNITED STATES OF AMERICA and GRIFFIN BELL, ATTORNEY GENERAL OF THE UNITED STATES, individually and in his official capacity,

Defendants.

ORDER

Plaintiff filed this action on August 1, 1978, pursuant to 42 U.S.C. § 1973c seeking a declaratory judgment that Miss. Laws, 1978, Chs. 515 and 535, H.B. 1491 and S.B. 3098, the statutory reapportionment plan, do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. Defendants filed their answer denying that plaintiff was entitled to the relief requested, and the Court allowed ten black Mississippi voters to intervene in this action as defendants on behalf of the class of all black citizens and black registered voters of Mississippi qualified to vote in state legislative elections. The Court having held a hearing and having conducted oral argument on the matter and having issued its findings of fact and conclusions of law, it is, in accordance with the Court's findings of fact and conclusions of law, this 1st day of June, 1979.,

ORDERED, that plaintiff's prayer for a declaratory judgment that Miss. Laws, 1978, Chs. 515 and 535, H.B. 1491 and S.B. 3098, the statutory reapportionment plan,

do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color is granted; and it is further

ORDERED, that this action be and hereby is dismissed.

/s/ Malcolm Richard Wilkey
United States Circuit Judge

/s/ J. H. Pratt
United States District Judge

/s/ June L. Green
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 78-1425

[Received June 8, 1979]

STATE OF MISSISSIPPI,

Plaintiff,

v.

UNITED STATES OF AMERICA and GRIFFIN B. BELL, Attorney General of the United States, individually and in his official capacity,

Defendants,

and

AARON E. HENRY, HENRY J. KIRKSEY, MRS. MARY HIGHTOWER, JOHNNIE E. WALLS, JR., CHARLES VICTOR MCTEER, FRED L. BANKS, JR., DAVID JORDAN, JAMES E. WINFIELD, BENNIE G. THOMPSON, and BARNEY SCHOBY,

Defendant-Intervenors.

NOTICE OF APPEAL

Notice is hereby given that Aaron E. Henry, Henry J. Kirksey, Mrs. Mary Hightower, Johnnie E. Walls, Jr., Charles Victor McTeer, Fred L. Banks, Jr., David Jordan, James E. Winfield, Bennie G. Thompson, and Barney Schoby, defendant-intervenors herein, appeal to the Supreme Court of the United States from the order of the three-judge district court entered in this action on June 1, 1979 which granted the plaintiffs prayer for a declaratory judgment that Mississippi Laws, 1978, Chs. 515 and 535, H.B. 1491 and S.B. 3098, the statutory reapportionment plan, do not have the purpose and

will not have the effect of denying or abridging the right to vote on account of race or color.

This appeal is taken pursuant to 42 U.S.C. § 1973(c).

/s/ Richard S. Kohn
ROBERT A. MURPHY
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Dated: June 6, 1979

CHAPTER 515

HOUSE BILL NO. 1491

AN ACT to amend Section 5-1-1, Mississippi Code of 1972, to reapportion the Mississippi House of Representatives using legislative criteria and precinct lines; and for related purposes.

Be it enacted by the Legislature of the State of Mississippi:

Section 1. Section 5-1-1, Mississippi Code of 1972, is amended as follows:

5-1-1. The number of representatives shall be one hundred twenty-two (122) and shall be elected from districts, composed as follows:

(1) District 1 shall be composed of Tishomoingo County, less the precincts of Belmont and Golden; and Glen, Farmington and East Corinth precincts in Alcorn County.

(2) District 2 shall be composed of that portion of Alcorn County not contained in Districts 1 and 3.

(3) District 3 shall be composed of the precincts of Rienzi, Biggersville, Bethel, Jacinto and Union in Alcorn County; and SD's 1, 2 and 5 in Prentiss County.

(4) District 4 shall be composed of Tippah County; and the precincts of Hopewell, Fairgrounds, Canaan, Michican City and Lamar in Benton County.

(5) District 5 shall be composed of the precincts of Barton, Byhalia, Cayce, Early Grove, Hudsonville, Mt. Pleasant, North Holly Springs No. 1, North Holly Springs No. 2, Red Banks, Slayden, South Holly Springs No. 4, South Holly Springs No. 5, Victoria, Warsaw, Watson and West Holly Springs No. 1 in Marshall County.

(6) District 6 shall be composed of SD's 1 and 5 and the precincts of Plum Point, Nesbit West and Hernando West in DeSoto County.

(7) District 7 shall be composed of SD 3 and the precincts of Southhaven East, Southhaven West No. 2, Horn Lake, Aldens, Days, Eudora and Oak Grove in DeSoto County.

(8) District 8 shall be composed of Tate County.

(9) District 9 shall be composed of Tunica County; and the precincts of Sledge, Belen, North Marks, West Marks, Darling and Mattie in Quitman County.

(10) District 10 shall be composed of SD's 1 and 4 and the precincts of Courtland, East Crowder, East Pope, West Pope, Towoco, East Batesville 2, West Batesville 1, West Sardis, North Sardis, East Sardis and East Batesville 1 in Panola County.

(11) District 11 shall be composed of SD 2 and the precincts of North Curtis, South Curtis, North Batesville, West Batesville 2 and West Batesville 3 in Panola County; and the precincts of Marks, West Lambert, Lambert and Crowder in Quitman County.

(12) District 12 shall be composed of the precincts of Oxford 4, Burgess, Taylor, Orwood, Shackleford, Higgenbotham, Airport Grocery, Oxford 5, Oxford 1, Oxford 3 and Oxford 2 in Lafayette County.

(13) District 13 shall be composed of the precincts of Hickory Flat, Ashland, Harris Mill, Winborn, Floyd and Shawnee in Benton County; the precincts of Wall Hill, Marianna, Chulahoma, Laws Hill, Lake Estates, Potts Camp, Waterford, Bethlehem and Cornesville in Marshall County; the precincts of Free Springs, College Hill, Abberville, Paris, Mullins, Springs Hill, Tula, Delay, North Tula, Pine Bluff, Denmark, Lafayette Springs, Philadelphia and Yocona in Lafayette County; and the

precincts of North East, South East and North West in Yalobusha County.

(14) District 14 shall be composed of Union County.

(15) District 15 shall be composed of Pontotoc County.

(16) District 16 shall be composed of SD 4 and the precincts of Bissell, Brewer, Shannon, Richmond, Plantersville, Tupelo 5, East Heights South, Petersburg and Kedron in Lee County.

(17) District 17 shall be composed of SD 2 and the precincts of Belden, Eggville, Gilvo, Mooreville, Auburn, East Heights North and Tupelo 3 in Lee County.

(18) District 18 shall be composed of SD 1 in Lee County; and SD's 3 and 4 in Prentiss County.

(19) District 19 shall be composed of Itawamba County; and the precincts of Belmont and Golden in Tishomingo County.

(20) District 20 shall be composed of SD's 1 and 2 and the precincts of Amory 5th, Bartahatchie, Gattman, Grubb Springs, Lackey, and that portion of Hamilton in ED's 23 and 24 in Monroe County.

(21) District 21 shall be composed of SD 4 and the precincts of Nettleton, Boyds, Bigbee, Central Grove, Willis, Wern, Aberdeen 3rd, and that portion of Hamilton in ED's 26 and 27 in Monroe County; and Nettleton precinct in Lee County.

(22) District 22 shall be composed of Chickasaw County; and the precincts of Wardwell, Bentley, Sabougla, Denton, Slate Springs, Pleasant Hill and Derma No. 4 in Calhoun County.

(23) District 23 shall be composed of SD's 1 and 5 and the precincts of Boat Landing, Pine Valley, West and Leggo in Yalobusha County; and SD's 1, 2 and 3

and the precincts of West Vardaman, East Vardaman, Loyd, New Liberty, Calhoun City No. 4 and Derma No. 5 in Calhoun County.

(24) District 24 shall be composed of the precincts of Holcomb, Oxberry, Pea Ridge, Hardy, Geeslin Corner, precinct One, precinct Four, precinct Five, precinct Six, Tie Plant and Elliott in Grenada County; and the precincts of Oakland, Tillatoba and Scobey in Yalobusha County.

(25) District 25 shall be composed of Montgomery County; SD 2 of Attala County; and the precincts of Providence, Gore Springs, Mt. Nebo, Spears, Kirkman and Futheyville in Grenada County.

(26) District 26 shall be composed of the precincts of Clarksdale No. 3, Clarksdale No. 4, Lyon, Jonestown, Mattson and Cagles Crossing in Coahoma County.

(27) District 27 shall be composed of the precincts of Friars Point, Lula, Clarksdale No. 1, Clarksdale No. 2, Clarksdale No. 5 and Coahoma in Coahoma County.

(28) District 28 shall be composed of the precincts of Roundaway, Farrell, Bobo, Sherard and Rena Lara in Coahoma County; and the precincts of Duncan-Alligator, Shelby, Mound Bayou, Merigold (that portion east of a line beginning at the southeast corner of Section 1, T24 N, R6W, south to southeast corner of Section 24, west along section line to southwest corner of Section 24, south on section line to sotuhwest corner of Section 25) and North Cleveland in Bolivar County.

(29) District 29 shall be composed of the precincts of West Cleveland, West Central Cleveland, East Central Cleveland, Boyle, Merigold (that portion west of a line beginning at the southeast corner of Section 1, T24N, R6W, south to southeast corner of Section 24, west along section line to southwest corner of Section 24, south on

section line to southwest corner of Section 25) and East Cleveland in Bolivar County.

(30) District 30 shall be composed of the precincts of Gunnison, Rosedale, Pace, Benoit, Longshot, Scott, Stringtown, Shaw and Skene in Bolivar County.

(31) District 31 shall be composed of SD's 4 and 5 and Sunflower precinct in Sunflower County.

(32) District 32 shall be composed of SD 1 and the precincts of Moorehead, Fairview, Hale, Indianola No. 2 and Indianola No. 3 in Sunflower County.

(33) District 33 shall be composed of Tallahatchie County, except Philipp precinct.

(34) District 34 shall be composed of the precincts of Schlater, North Itta Bena, South Itta Bena, Morgan City, Swiftown, Rising Sun, Southwest Greenwood, South Greenwood, Sidon and Southeast Greenwood in Leflore County.

(35) District 35 shall be composed of the precincts of East Greenwood, Central Greenwood, North Greenwood and West Greenwood in Leflore County.

(36) District 36 shall be composed of Carroll County; Philipp precinct in Tallahatchie County; West precinct in Holmes County; and the precincts of Minter City, Money and Northeast Greenwood in Leflore County.

(37) District 37 shall be composed of Choctaw and Webster counties.

(38) District 38 shall be composed of Clay County.

(39) District 39 shall be composed of the precincts of Maben, Sturgis, Bradley, Double Springs, Self Creek, Adaton, Northwest Starkville, Southwest Starkville, North Longview, South Longview, Southeast Starkville, and that portion of Northeast Starkville bounded by a

line described as follows: beginning at a point where the Northeast Starkville precinct line intersects the eastern boundary of ED 7, thence northerly along said boundary to its intersection with U.S. Highway 82, thence easterly along said highway to its intersection with the eastern boundary of the Northeast Starkville precinct, thence northerly, westerly, southerly and easterly along said precinct boundary to its intersection with the eastern boundary of ED 7, the point of beginning, in Oktibbeha County.

(40) District 40 shall be composed of Noxubee County; Crawford precinct in Lowndes County; and the precincts of Sessums, Oktoc and Craig Springs in Oktibbeha County.

(41) District 41 shall be composed of the precincts of Caledonia, Air Base, Rural Hill, Caldwell School, Sale School, Lee High School, Stokes Beard (that portion outside the city corporation limits) and Brandon School (that portion north of the Columbus and Greenville Railway) in Lowndes County.

(42) District 42 shall be composed of the precincts of New Hope, Fairview School, Coleman Elementary School, Stokes Beard (that portion within the city corporation limits), Hunt School and Franklin School in Lowndes County.

(43) District 43 shall be composed of the precincts of Carrier Lodge, Mitchell Memorial School, West Lowndes, Artesia, Mayhew, that portion of Brandon School south of the Columbus and Greenville Railway in Lowndes County; the precincts of Hickory Grove, Bell School House, Osborn, and Northeast Starkville, except for that portion bounded by a line described as follows: beginning at a point where the Northeast Starkville precinct line intersects the eastern boundary of ED 7, thence northerly along said boundary to its intersection

with U.S. Highway 82, thence easterly along said highway to its intersection with the eastern boundary of the Northeast Starkville precinct, thence northerly, westerly, southerly and easterly along said precinct boundary to its intersection with the eastern boundary of ED 7, the point of beginning, in Oktibbeha County.

(44) District 44 shall be composed of Kemper County; and the precincts of Meehan, Sageville, South Nelliesburg, Valley, Obadiah, Shucktown, Pine Springs, Nelliesburg, School Gap, Post, Collinsville, Suqualena, Schamberville, Martin, Center Hill, West Lauderdale, Daleville, Lizelia, Andrews Chapel, Bailey, Prospect and Covington in Lauderdale County.

(45) District 45 shall be composed of Winston County.

(46) District 46 shall be composed of Neshoba County, excluding the New Woodland, Zephyr Hill and New Coldwater precincts.

(47) District 47 shall be composed of Leake County; and the New Woodland, Zephyr Hill and New Coldwater precincts in Neshoba County.

(48) District 48 shall be composed of SD's 1, 3, 4 and 5 in Attala County.

(49) District 49 shall be composed of the precincts of Cruger, Thornton, Lexington 4, Lexington 1, Durant, Goodman, Pickens, Ebenezer and Coxburg in Holmes County.

(50) District 50 shall be composed of Humphreys County; and Tchula precinct in Holmes County.

(51) District 51 shall be composed of the precincts of 1-1, 2-2 and 5-5 in Washington County.

(52) District 52 shall be composed of the precincts of 3-4, 4-1, 5-4, and that portion of 3-3 bounded by a line described as follows: beginning at the intersection of

Hinds Street and Magnolia Street, thence southerly along Hinds Street to West Union Street, to North Poplar Street, to Alexander Street East, to Shelby Street North, to Main Street, thence along Main Street and Main Street extended to its intersection with the western boundary of precinct 3-3, thence northerly and easterly along said boundary to the point of beginning, in Washington County.

(53) District 53 shall be composed of the precincts of 5-1, 5-2, 5-3, 2-4, 4-2, 4-3 and that portion of 2-1 not contained in District 54 in Washington County.

(54) District 54 shall be composed of the precincts of 1-2, 3-1, 3-2, 1-4, 2-3, that portion of 2-1 described as follows: beginning at the intersection of State Highway 1 with Reed Road, thence southerly along State Highway 1 to its intersection with Barbara Street, thence generally westward along Barbara Street and Barbara Street extended for about 2075 feet, thence generally southerly along a line parallel to Irby Street extended for about 900 feet to the extension of Pauline Street, and thence generally westward along Pauline Street extended for about 1200 feet to Canal Avenue which is the westerly boundary of precinct 2-1, thence northerly and then easterly along the boundary of said precinct to the point of beginning; and 1-3 and that portion of 3-3 not contained in District 52 in Washington County; and the precinct of Delta City in Sharkey County.

(55) District 55 shall be composed of Issaquena County; all of Sharkey County but Delta City precinct; and the precincts of Brunswick, Redwood, Oak Ridge, Culkin, Kings and Walters in Warren County.

(56) District 56 shall be composed of the precincts of Bovina, Beechwood, Tingle, No. 6 (Pipe Fitters and Plumbers Hall), No. 4 (High School Complex B), Cedar Grove, No. 1 (City Auditorium), No. 3 (American Legion

Home) (that portion east of First North Street), and No. 2 (St. Aloysius High School) in Warren County.

(57) District 57 shall be composed of the precincts of Goodrum, Redbone, Jett, Jonestown, Yokena, No. 5 (No. 7 Fire Station), and No. 3 (American Legion Home) (that portion west of First North Street) in Warren County.

(58) District 58 shall be composed of the precincts of Valley, Benton, Free Run, West Midway, Lake City, South City Hall, Robinette, Center Ridge, North City Hall, West Courthouse, East Courthouse, East Lintonia, West Lintonia, Carter, Eden and Zion in Yazoo County.

(59) District 59 shall be composed of SD's 4 and 5 and the precincts of Canton 1, Canton 2, Canton 3, Canton 4 and Canton 5, and that portion of Canton 6 east of Highway I-55 in Madison County.

(60) District 60 shall be composed of SD 3 and the precincts of Canton 6 (that portion west of Highway I-55), Smith School and Flora in Madison County; and the precincts of Dover, East Bentonia, West Bentonia, Fugates, Deasonville, Harttown, East Midway, Mechanicsburg, Phoenix, Satartia, Enola, Fairview and Holly Bluff in Yazoo County.

(61) District 61 shall be composed of the precincts of North Pelahatchie, Leesburg, Pisgah, Fannin, Oakdale, Holbrook, Skyway Hills, North McLaurin, Flowood, West Pearson, Henry Grady, Castlewoods, Reservoir, South McLaurin, South Pelahatchie, Shiloh, Crossroads, North Pearson, Crossgates, and that portion of North Brandon precinct north and east of a line described as follows: beginning at the intersection of the southwest boundary of North Brandon precinct and the Illinois Central railroad in Section 16, then northeast and east on Illinois Central Railroad to its interestion with Richland Creek in the middle of Section 12, then south on

Richland Creek to its intersection with U.S. Highway 80 and the southern boundary of North Brandon precinct in Rankin County.

(62) District 62 shall be composed of the precincts of Antioch, Mayton, Puckett, County Line, Cato, Johns, Dobson, Dry Creek, West Brandon, that portion of North Brandon precinct not located in District 61, Whitfield, Spring Hill, Shoto, West Pearl, Pearl, Cunningham Heights, South Pearson, Patton Place and East Brandon in Rankin County.

(63) District 63 shall be composed of the precincts of Crystal Springs East, Carpenter and Crystal Springs West in Copiah County; the precincts of Star, Monterey, East Steens Creek, North Plain, South Plain, Cleary, West Steens Creek, Clear Branch and Mt. Creek in Rankin County; and the precincts of Pearl, Fork Church and Harrisville in Simpson County.

(64) District 64 shall be composed of precincts 41, 44, 45, 78, 79, 80, 81, 82, 83, 84, Cynthia and Liberty Grove in Hinds County.

(65) District 65 shall be composed of precincts 13, 35, 36, 37, 38, 39, 40, 42, 43 and that portion of precinct 17 not in District 66 in Hinds County.

(66) District 66 shall be composed of precincts 5, 6, 8, 9, 14, 15, 16, that portion of precinct 17 described as follows: beginning at the intersection of State Street and Ridgeway Street, proceeding north on State Street to Council Circle, thence east and south along Council Circle to Mohawk Avenue, proceeding east on Mohawk to Sherwood Drive, thence generally southeasterly along Sherwood Drive to Hawthorne Drive, thence south on Hawthorne Drive to the boundary of precinct 17, thence generally westerly along the southern boundary of the precinct to the point of beginning, precincts 32, 33 and 34 in Hinds County.

(67) District 67 shall be composed of precincts 21, 22, 23, 27, precinct 28 north of Ridgeway, precincts 29, 30 and 61 in Hinds County.

(68) District 68 shall be composed of precincts 11, 12, 20, that portion of precinct 28 south of Ridgeway, precincts 31, 55 and 56 in Hinds County.

(69) District 69 shall be composed of precincts 51, 53, 54, 57, 58, 63, 64, that portion of precinct 52 west of Prentiss, and precinct 66 in Hinds County.

(70) District 70 shall be composed of precincts 1, 2, 4, 10, 18, 19, 50, and that portion of precinct 52 east of Prentiss in Hinds County.

(71) District 71 shall be composed of precincts 47, 49, 72, 73, 74, 75, 76 and 77 in Hinds County.

(72) District 72 shall be composed of precincts 24, 26, 59, 60, 62, 67, 68, 69, 70 and 71 in Hinds County.

(73) District 73 shall be composed of precincts 89, 92, 93, 94, 95, 96, 97 and the precincts of Byram, Old Byram, Cayuga, Chapel Hill, Dry Grove, Learned, Terry, Utica 1 and Utica 2 in Hinds County.

(74) District 74 shall be composed of precincts 25, 86, 87, 88, 90, 91 and the precincts of Midway, Van Winkle No. 1, Van Winkle No. 2, Raymond 1 and Raymond 2 in Hinds County.

(75) District 75 shall be composed of the precincts of Bolton, Brownsville, Clinton 1, Clinton 2, Clinton 3, Clinton 4, 85, Edwards, North Clinton, Pocahontas and Tinnin in Hinds County.

(76) District 76 shall be composed of that portion of Scott County not in the precincts of High Hill, Lake, Usry, Salem, Langs Mill and Northeast Forest.

(77) District 77 shall be composed of all of Copiah County but the precincts of Crystal Springs East, Crystal Springs West and Carpenter.

(78) District 78 shall be composed of Simpson County, less Pearl, Fork Church and Harrisville precincts.

(79) District 79 shall be composed of Newton County, less Hazel Lawrence precincts.

(80) District 80 shall be composed of Smith County; and the precincts of High Hill, Lake, Usry, Salem, Langs Mill and Northeast Forest in Scott County.

(81) District 81 shall be composed of Jasper County; and the precincts of Hazel and Lawrence in Newton County.

(82) District 82 shall be composed of the precincts of Stone Deavours School, City Barn, Sandy Gavin School, Oak Park School, Ovett, Crotts, Tuckers, Glade, Northeast School, Myrick, Erata, Sandersville School and Courthouse in Jones County.

(83) District 83 shall be composed of the precincts of Meridian 1A, 1B, 2B, 5E, East Gap, Russell, Kewanee, Toomsuba, Dalewood, East Lauderdale, Lockhart, East Marion, Lauderdale, Ponta, Alamucha, Vimville, Marion, Odom, Bonita, Chapman, Long Creek, School Gap, South Marion, and that area outside the city of Meridian south of the South Marion precinct and west of Highway 45 in Lauderdale County.

(84) District 84 shall be composed of the precincts of Meridian 2C, 4C, 4D, 5A and 5B in Lauderdale County.

(85) District 85 shall be composed of the precincts of Meridian 1C, 2A, 3A, 3B, 3C, 4A, 4B and 5C in Lauderdale County.

(86) District 86 shall be composed of Clarke County; and the precincts of Whynot, Causeyville, Center Grove, Zero, Pickard, Carmichael, Clarksdale, Jones Store and Wanita in Lauderdale County.

(87) District 87 shall be composed of Claiborne County; and SD's 2, 3, 4 and 5 in Jefferson County.

(88) District 88 shall be composed of the precincts of Mason School, 26th Street Fire Station, Anthony's Florist, Nora Davis, Harper Transfer, Sharon, Shady Grove, Matthews, West Jones School, Calhoun, Gitano, Soso, Bruce, Centerville, Hebron, Pleasant Ridge and Blackwell in Jones County.

(89) District 89 shall be composed of Wayne County; and the precincts of Rustin and Sandersville in Jones County.

(90) District 90 shall be composed of the precincts of Lamar School, Prentiss School, Maddox School, Fairgrounds, Pendorf, Sandhill, Rainey, Pine Grove, County Barn, Union, Moselle, Shelton, Ellisville No. 1 and Ellisville No. 2 in Jones County.

(91) District 91 shall be composed of Covington County; and SD's 2 and 3 and Clem precinct in Jefferson Davis County.

(92) District 92 shall be composed of Lawrence County; and SD's 1, 4 (less Clem precinct) and 5 in Jefferson Davis County.

(93) District 93 shall be composed of SD 2 and the precincts of Fair River, Brookhaven High School, Courthouse, Ole Brook, Southeast Brookhaven, Halbert Heights, City Hall, Zetus, Lloyd Star and Northwest Brookhaven in Lincoln County.

(94) District 94 shall be composed of the precincts of Johnson, Arlington, West Lincoln, Johnson Grove, Ruth, Norfield, Bogue Chitto, Enterprise, East Lincoln and McClendon in Lincoln County; and the precincts of 4/18, 4/17, 3/16, 3/13, 3/12, 3/11, 4/19, 5/27, 5/26, 1/1, 1/2 and 1/3 in Pike County.

(95) District 95 shall be composed of the precincts of Pine Ridge, Concord, Morgantown, North Natchez, Somerset, Anchorage, Northside School and Carpenter No. 1 in Adams County.

(96) District 96 shall be composed of the precincts of Airport, Washington, Bellemont, Beau Pre, Oakland, Courthouse, ByPass Fire Station, Liberty Park, Cloverdale, Palestine, Duncan Park and Kingston in Adams County.

(97) District 97 shall be composed of Franklin County; SD 1 in Jefferson County; the precincts of Vaughn, Caseyville and Old Red Star in Lincoln County; and SD 3 and the precincts of New Zion, Zion Hill, South Gloster, Smithdale, Liberty and Tangipahoa in Amite County.

(98) District 98 shall be composed of Wilkinson County; and the precincts of East Liberty, South Liberty, Graves, Walls, Riceville, Tickfaw, Ariel, Berwick, East Centreville, Street and East Fork in Amite County.

(99) District 99 shall be composed of the precincts of 2/8, 5/25, 2/9, 2/7, 4/20, 3/14, 4/21, 3/15, 1/5, 5/22, 1/4, 5/23, 2/6, 2/10 and 5/24 in Pike County.

(100) District 100 shall be composed of Walthall County; and the precincts of Sandy Hook, Union, Hub, Pine Burr, Balls Mill, Pittman and Kokomo in Marion County.

(101) Disrict 101 shall be composed of SD's 1, 2 and 3 and the precincts of East Columbia, South Columbia and Courthouse in Marion County.

(102) District 102 shall be composed of Lamar County; and the precincts of Brooklyn, Carnes, Maxie and Rawls Springs in Forrest County.

(103) District 103 shall be composed of the precincts of Woodley School, Blair High School, Grace Christian School, Hawkins Junion High (west of Main Street), Pinecrest, Westside and Thames School in Forrest County.

(104) District 104. shall be composed of the precincts of Hawkins Junior High School (that portion east of Main Street), Jones School, East Bowie, Walthall School, Eaton School, Rowan High School, Lillie Burney School, William Carey, Dixie Pine and Camp School in Forrest County.

(105) District 105 shall consist of the precincts of Eatonville, Glendale, Petal-Leeville, Macedonia, Petal High School, Petal-Harvey School, Sunrise, McCallum, McLaurin, Forrest County Agricultural High School, Dixie, Central School and Davis School in Forrest County.

(106) District 106 shall be composed of Greene County and Perry County.

(107) District 107 shall be composed of the precincts of Elarbee, Thomas Price, Red Creek, South Central Wiggins, Perkinston and McHenry in Stone County; the precincts of Ladner, Lizana, Vidalia, West Lyman, Riceville, Advance and West Saucier in Harrison County; and the precincts of Hillsdale, Byrd Line, Hickory Grove, Caesar, Salem, Henleyfield, Gum Pond, Wolf River, Poplarville East, Oak Hill, White Sand, Buck Branch, Poplarville West, Progress, Silver Run, Savannah, Derby, Ford's Creek, McNeill and Steep Hollow in Pearl River County.

(108) District 108 shall be composed of George County; and the precincts of Bond, Central Wiggins, East Central Wiggins, Tuxechena, Flint Creek, Wisdom and Pleasant Hill in Stone County.

(109) District 109 shall be composed of the precincts of Mill Creek, Pine Grove, Picayune 4, Nicholson, Picayune 5, Carriere, Picayune 3, Picayune 2, Picayune 1 and Ozona in Pearl River County.

(110) District 110 shall be composed of the precincts of Wade, Hurley, Big Point, Orange Grove, Helena, East

Escatawpa, West Escatawpa, Bayou Casotte No. 4, Bayou Casotte No. 3 and Jefferson Street in Jackson County.

(111) District 111 shall be composed of the precincts of Griffin Heights, Eastside, Moss Point No. 1, Moss Point No. 2, Moss Point No. 3, Moss Point No. 4, Elder Street and Kreole in Jackson County.

(112) District 112 shall be composed of the precincts of Bayou Casotte No. 1, Bayou Casotte No. 2, Pinecrest, Country Club, Jackson Avenue, Eastlawn, Central, North Pascagoula, Ingalls Avenue, American Legion, South Pascagoula, 11th Street No. 1 and 11th Street No. 2 in Jackson County.

(113) District 113 shall be composed of the precincts of North Gautier, Courthouse, Fire Station, Lake School, Carterville, Larue, North Vancleave, South Vancleave, Latimer, St. Martin and South Gautier in Jackson County; and D'Iberville precinct in Harrison County.

(114) District 114 shall be composed of the precincts of South Fountainbleau, Ocean Springs No. 1, Ocean Springs No. 2, Ocean Springs No. 3, Ocean Springs No. 4, Ocean Springs East, Gulf Hills, Satellite and North Fountainbleau in Jackson County.

(115) District 115 shall be composed of the precincts of Biloxi 1, Biloxi 2, Biloxi 3, Biloxi 4, Biloxi 5, Biloxi 6 and Biloxi 7 in Harrison County.

(116) District 116 shall be composed of the precincts of North Bay, Holly Hills, Biloxi 7A, and that portion of Biloxi 8 not located in District 117 in Harrison County.

(117) District 117 shall be composed of the precincts of Biloxi 9, Biloxi 10, Biloxi 11, and that portion of East Handsboro (south of Pass Christian Road), and that portion of Biloxi 8 west of Keesler Air Force Base and west of St. Charles Avenue in Harrison County.

(118) District 118 shall be composed of the precincts of West Handsboro, East Mississippi City, West Mississippi City, Gulfport 6, Gulfport 7, Gulfport 11, Gulfport 12 and part of East Handsboro (north of Pass Christian Road) in Harrison County.

(119) District 119 shall be composed of the precincts of West North Gulfport, East North Gulfport, Gulfport 3, Gulfport 4, Gulfport 5, Gulfport 8, Gulfport 9 and Gulfport 13 in Harrison County.

(120) District 120 shall be composed of the precincts of Gulfport 1, Gulfport 2, Gulfport 10, Gulfport 14, East Long Beach, West Long Beach, East Pass Christian and West Pass Christian in Harrison County.

(121) District 121 shall be composed of the precincts of White Plains, Howard Creek, Stonewall, Peace, Poplar Head, East Lyman, East Saucier, New Hope, Outside Long Beach, West Orange Grove, Pineville, DeLisle and East Orange Grove in Harrison County.

(122) District 122 shall be composed of Hancock County.

For purposes of this plan, the term "SD" shall mean supervisors district as it exists upon the date of passage of this act, "MCD" shall mean minor civil division as it existed in 1970 when the 1970 Decennial Census was taken in that county, and "ED" shall mean enumeration district as it existed in 1970 when the 1970 Decennial Census was taken in that county.

Section 2. This act shall be liberally construed to effectuate the purposes thereof and to apportion and district the House of Representatives of this state in compliance with constitutional requirements.

It is intended that this act and the districts described herein completely encompass all the area within the state. It is also intended that such districts contain all the in-

habitants in this state. It is further intended that the apportionment and districting provided for in this act result in the creation of districts which are substantially equal in population. It is also intended that no district shall include any of the area included within the description of any other district.

The apportionment of representative districts and senate districts shall be deemed to be separate from each other. The invalidity of the districts of one (1) house shall not affect or require the redistricting of the other house when the districts of the other house have been found to be valid by a court of competent jurisdiction.

Section 3. (1) If the districts described in this act do not carry out the purposes thereof, because of unintentional omissions; duplications; overlapping areas; erroneous nomenclature; lack of adequate maps or descriptions of political subdivisions, wards or other divisions thereof, or of their boundary lines; street closings, changes in names of streets, or other changes of public places; alteration of the boundary or courses of waters or waterways, filling in of lands under water, accretion or other changes in shorelines; or alteration of courses, rights-of-way, or lines of public utilities or other conditions, then the Secretary of State, at the request of the Special Joint Legislative Committee on Reapportionment shall, by order, correct such omissions, overlaps, erroneous nomenclature or other defects in the description of districts so as to accomplish the purposes and objectives of this act.

(2) In promulgating such orders, the Secretary of State, in addition to achieving equality in the population of districts and insuring that all areas of the state are completely and accurately encompassed in such districts, shall be guided by the following standards;

(a) Gaps in the description of any district shall be completed in a manner which results in a total descrip-

tion of that district in a manner which is consonant with the description of adjacent districts and results in complete contiguity of districts;

(b) Areas of the state included within the descriptions of more than one (1) district shall be allocated to the district having the lowest population;

(c) Areas of the state not included within the descriptions of any district shall be allocated to the adjacent district having the lowest population;

(d) In the event that the area subject to corrected description or allocation as provided in subsections (a), (b) and (c) of this paragraph is of such size or contains such population that its inclusion as a unit in any district would result in substantial disparity in the size, shape or population of such district, then the Secretary of State may allocate portions of such area to two (2) or more districts; and

(e) In any allocation of area or correction of descriptions made pursuant to this section, the Secretary of State shall, consistent with the foregoing standards, preserve the contiguity and compactness of districts and avoid the unnecessary division of political subdivisions.

(3) Copies of such orders shall be filed by the Secretary of State in his own office and in the offices of the affected commissioners of election and registrars. The Secretary of State may adopt reasonable rules regulating the procedure for applications for orders under this section in the manner of serving and filing any notice or copy of orders relating thereto.

(4) Upon the filing of such an order, the description of any affected district shall be deemed to have been corrected in the manner provided in such order to the full extent as if such correction had been contained in the original description set forth in this act.

Section 4. The Attorney General of the State of Mississippi is hereby directed to exhaust all options under Section 5 of the Voting Rights Act of 1965, as amended and extended, in seeking to effectuate this act.

Section 5. This act shall take effect and be in force if it is finally effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.

Approved: April 21, 1978

CHAPTER 535

SENATE BILL NO. 3098

AN ACT to amend Section 5-1-3, Mississippi Code of 1972, to provide for the reapportionment of the Mississippi Senate; and for related purposes.

Be it enacted by the Legislature of the State of Mississippi:

Section 1. Section 5-1-3, Mississippi Code of 1972, is amended as follows:

5-1-3. The number of Senators shall be fifty-two (52) and shall be elected from fifty-two (52) districts, composed as

DISTRICT 1	PRECINCTS
DeSoto County	All
Tunica County	1, 2, 3, 4, 5, 7, 9
DISTRICT 2	
Marshall County	All
Tate County	All
DISTRICT 3	
Benton County	All
Pontotoc County	All
Union County	All
DISTRICT 4	
Alcorn County	All
Tippah County	All

DISTRICT 5	
Itawamba County	Ryan, Copeland, Mt. Guilard, Pineville, Bounds Crossroads, Armory, Fulton 1, Fulton 4, Fulton 5, Clay, Tremont, Wigginton, Hampton, Cadamy, Turon, New Salem, Tilden, Oakland, Pleasanton
Prentiss County	All
Tishomingo County	All
DISTRICT 6	
Lee County	All except Shannon, Pleasant Grove, Old Union, Brewer
DISTRICT 7	
Itawamba County	Kirkville, Ozark, Centerville, Ratliff, Fawn Grove, Mantachie, Friendship, Dorsey, Greenwood, Evergreen, Bigbee Fork, Carolina, Cardsville
Monroe County	All
DISTRICT 8	
Calhoun County	All except Pittsboro, Reid, East Bruce, Pitts, Sarepta, Banner, Elland, Herron, Reynolds, West Bruce
Chickasaw County	All
Clay County	West West Point, Una, Carradine, Siloan, Abbott, Griffith, Cairo, Palestine, Montpelier, Pine Bluff, Central West Point, North West Point, Pheba
Lee County	Old Union, Shannon, Brewer, Pleasant Grove

DISTRICT 9	
Calhoun County	Pittsboro, Reid, East Bruce, Pitts, Sarepta, Ellard, Reynolds, West Bruce, Banner, Herron
Lafayette County	All
Yalobusha County	All except Oakland, Scobey, Tillatoba
DISTRICT 10	
Panola County	All
Quitman County	All
DISTRICT 11	
Coahoma County	All
Tunica County	6, 8, 10
DISTRICT 12	
Bolivar County	All except Duncan - Alligator, Shelby
DISTRICT 13	
Bolivar County	Duncan-Alligator, Shelby
Sunflower County	All
DISTRICT 14	
Leflore County	All
DISTRICT 15	
Grenada County	All
Tallahatchie County	All
Yalobusha County	Scobey, Tillatoba, Oakland
DISTRICT 16	
Carroll County	All
Choctaw County	All
Montgomery County	All
Webster County	All

DISTRICT 17	
Clay County	Cedar Bluff, South West Point, East West Point, Tibbee, Union Star, Vinton
Lowndes County	Air Base
Oktibbeha County	All
DISTRICT 18	
Lowndes County	All except Air Base
DISTRICT 19	
Neshoba County	All
Noxubee County	Brooksville, Mashulaville, Hashuqua, Summerville
Winston County	All
DISTRICT 20	
Holmes County	All except West, Durant, Goodman
Madison County	All except Flora North of the following: Highway 22, the Town of Flora and the South Flora Road
Yazoo County	Harttown
DISTRICT 21	
Humphreys County	All
Madison County	Flora North of the following: Highway 22, the Town of Flora and the South Flora Road
Yazoo County	All except Harttown
DISTRICT 22	
Sharkey County	All
Washington County	2/1, 2/4, 3/4, 4/2, 4/3, that part of 4/1 without the corporate limits of the City of Greenville, 5/1, 5/2, 5/3, 5/4

DISTRICT 23	
Issaquena County	All
Washington County	1/1, 1/2, 1/3, 1/4, 2/2, 2/3, 3/1, 3/2, 3/3, that part of 4/1 within the corporate limits of the City of Greenville, 5/5
DISTRICT 24	
Warren County	All
DISTRICT 25	
Hinds County	21, 24, 25, 26, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, Midway, Cynthia
DISTRICT 26	
Hinds County	1, 5, 6, 8, 9, 14, 15, 16, 17, 32, 33, 34, 35, 47, 49, 69, 70, 71, 72, 73, 74, 75, 76
DISTRICT 27	
Hinds County	10, 11, 12, 13, 18, 22, 23, 27, 28, 29, 30, 31, 54, 55, 56, 57, 60, 61, 62, that portion of Precinct 52 west of North Prentiss Street
DISTRICT 28	
Hinds County	2, 4, 19, 20, 50, 51, that portion of Precinct 52 east of North Prentiss Street, 53, 58, 59, 63, 64, 66, 67, 68, 89, 92
DISTRICT 29	
Hinds County	Edwards, Cayuga, Utica 1, Utica 2, Learned, Chapel Hill, Dry Grove, Terry, Byram, Old Byram, Raymond 1, Raymond 2, Bolton, Brownsville, Tinnin, Pocahontas, North Clinton, Clinton 1, Clinton 2, Clinton 3, Clinton 4, Van Winkle 1, Van Winkle, 2, 77, 90, 91, 93, 94, 95, 96, 97

DISTRICT 30	
Attala County	All
Holmes County	West, Durant, Goodman
Leake County	All
DISTRICT 31	
Newton County	All
Scott County	All
DISTRICT 32	
Kemper County	All
Lauderdale County	City of Meridian, 2C, 4C, 4D and 5B, Lauderdale, East Lauderdale, Dalewood, Kewanee, Toomsuba, Russell, Bonita, Odom, Vimville, Alamucha, Whynot, Long Creek, Chapman, Center Grove, Causeyville, Zero, East Gap, That area without the corporate limits of Meridian lying West of Highway 45, South of the South Marion Precinct and North of the Gap Precinct
Noxubee County	All except Mashulaville, Hashuqua, Brooksville, Summerville
DISTRICT 33	
Lauderdale County	City of Meridian, 1A, 1B, 1C, 2A, 2B, 3A, 3B, 3C, 4A, 4B, 5A, 5C, 5D and 5E, Ponta, Lockhart, East Marion, Marion, South Marion, Daleville, Lizelia, Andrews Chapel, Prospect, Covington, School Gap, Bailey, Obadiah, Shucktown, Nelliesburg, Pine Springs, Center Hill, Martin, Post, Collinsville, Schamberville, Meehan, Suquelena,

	South Nelliesburg, Wanita, Sageville, Valley, Pickard, Carmichael, Clarksdale, Jones Store, West Lauderdale
DISTRICT 34	
Clarke County	All
Jasper County	All
Smith County	All
DISTRICT 35	
Rankin County	All
DISTRICT 36	
Copiah County	Crystal Springs East, Crystal Springs West (inside Crystal Springs), Crystal Springs South (inside Crystal Springs), Hazlehurst (outside Hazlehurst), Hazlehurst East), Georgetown, Union, Wesson, Stronghope, Beauregard
Lawrence County	All
Simpson County	All
DISTRICT 37	
Claiborne County	All
Copiah County	All except Crystal Springs East, Crystal Springs West (inside Crystal Springs), Crystal Springs South (inside Crystal Springs), Hazlehurst East (outside Hazlehurst), Hazlehurst (outside Hazlehurst)
Franklin County	All
Jefferson County	All

DISTRICT 38	
Adams County	All
Wilkinson County	Fort Adams, Cold Springs, Woodville 4, Woodville 5, Woodville 2, Woodville 1
DISTRICT 39	
Amite County	All
Pike County	All except 1/1, 1/2, 3/11, 3/12, 4/18
Wilkinson County	Longmires, Macedonia, Centreville 1, Coons Mill, Centreville 3
DISTRICT 40	
Lincoln County	All
Pike County	1/1, 1/2, 3/11, 3/12, 4/18
Walthall	All except Dexter, Improve
DISTRICT 41	
Lamar County	All
Marion County	All
Walthall County	Dexter, Improve
DISTRICT 42	
Covington County	All
Jefferson Davis County	All
Jones County	Sandhill, Pine Grove, Rainey, Shelton, Moselle, County Barn, Union, Crotts, Ovett, Tuckers, Pendorf, South Jones, Ellisville Courthouse
DISTRICT 43	
Jones County	All except Sandhill, Rainey, Pine Grove, Shelton, Moselle, County Barn, Union, Crotts, Ovett, Tuckers, Pendorf, South Jones, Ellisville Courthouse

DISTRICT 44	
George County	All
Greene County	All
Jackson County	Hurley, Wade, Big Point
Wayne County	All
DISTRICT 45	
Forrest County	Thames, Dixie Pines, Central School, William Carey, Eatonville School, Walthall School, Rowan High School, Lillie Burney School, Blair High School, Woodley School, Camp School, Hawkins Junior High School, East Bowie, Jones School, Davis School, Grace Christian School, West Side, Pinecrest
DISTRICT 46	
Forrest County	All except Thames, Dixie Pines, Central School, William Carey, Eatonville School, Walthall School, Rowan High School, Lillie Burney School, Blair High School, Woodley School, Camp School, Hawkins Junior High School, East Bowie, Jones School, Davis School, Grace Christian School, West Side, Pinecrest
Harrison County	New Hope, Peace, Poplar Head, White Plains, East Saucier, West Saucier, Advance, Riceville, Vadalia, Lizana, Ladner, East Lyman, West Lyman, West Orange Grove
Perry County	All
Stone County	All

DISTRICT 47	
Hancock County	All
Pearl River County	All
DISTRICT 48	
Harrison County	Gulfport 1, Gulfport 2, Gulfport 3, that part of Gulfport 4 lying north of the L&N Railway, that part of Gulfport 5 lying north of the L&N Railway, Gulfport 8, Gulfport 9, Gulfport 10, Gulfport 13, Gulfport 14, East Long Beach, West Long Beach, East North Gulfport, West North Gulfport, East Pass Christian, West Pass Christian, Outside Long Beach, Pineville, Delisle
DISTRICT 49	
Harrison County	That part of Gulfport 4 lying south of the L&N Railway, that part of Gulfport 5 lying south of the L&N Railway, East Mississippi City, West Mississippi City, Gulfport 6, Gulfport 7, Gulfport 11, Gulfport 12, East Hansboro, West Hansboro, Stonewall, Biloxi 9, Biloxi 10, Biloxi 11, East Orange Grove
DISTRICT 50	
Harrison County	Biloxi 1, 2, 3, 4, 5, 6, 7, 7A, 8, D'Iberville, North Bay, Howard Creek, Holly Hills
DISTRICT 51	
Jackson County	Moss Point 2, Moss Point 3, Elder Street, St. Martin, Gulf Hills, Satellite, North Fountainbleau, North Gautier, Latimer, South Vancleave, North Vancleave, Larue,

	Carterville, Helena, East Escatawpa, West Escatawpa, Ocean Springs 1, 2, 3, 4, Ocean Springs East, Orange Grove
DISTRICT 52	
Jackson County	Kreole, Moss Point 1, Jefferson Street, Eastside, Griffin Heights, Moss Point 4, South Fountainbleu, South Gautier, Firestation, Lake School, North Pascagoula, Pinecrest, Jackson Avenue, Eastlawn, Central Firestation, Court House, Ingalls Avenue, South Pascagoula, American Legion, 11 Street 1, 11 Street 2, Country Club, Bayou Cassotte 1, 2, 3, 4

Section 2. This act shall be liberally construed to effectuate the purposes thereof and to apportion and district the Senate of this state in compliance with constitutional requirements.

It is intended that this act and the districts described herein completely encompass all the area within the state. It is also intended that such districts contain all the inhabitants in this state. It is further intended that the apportionment and districting provided for in this act result in the creation of districts which are substantially equal in population. It is also intended that no district shall include any of the area included within the description of any other district.

The apportionment of representative districts and senate districts shall be deemed to be separate from each other. The invalidity of the districts of one (1) house shall not affect or require the redistricting of the other house when the districts of the other house have been found to be valid by a court of competent jurisdiction.

Section 3. (1) If the districts described in this act do not carry out the purposes thereof, because of unintentional omissions; duplications; overlapping areas; erroneous nomenclature; lack of adequate maps or descriptions of political subdivisions, wards or other divisions thereof, or of their boundary lines; street closings, changes in names of streets, or other changes of public places; alteration of the boundary or courses of waters or waterways, filling in of lands under water, accretion or other changes in shorelines; or alteration of courses, rights-of-way, or lines of public utilities or other conditions, then the Secretary of State, at the request of the Special Joint Legislative Committee on Reapportionment shall, by order, correct such omissions, overlaps, erroneous nomenclature or other defects in the description of districts so as to accomplish the purposes and objectives of this act.

(2) In promulgating such orders, the Secretary of State, in addition to achieving equality in the population of districts and insuring that all areas of the state are completely and accurately encompassed in such districts, shall be guided by the following standards:

(a) Gaps in the description of any district shall be completed in a manner which results in a total description of that district in a manner which is consonant with the description of adjacent districts and results in complete contiguity of districts;

(b) Areas of the state included within the descriptions of more than one (1) district shall be allocated to the district having the lowest population;

(c) Areas of the state not included within the descriptions of any district shall be allocated to the adjacent district having the lowest population;

(d) In the event that the area subject to corrected description or allocation as provided in subsections (a), (b) and (c) of this paragraph is of such size or contains such

population that its inclusion as a unit in any district would result in substantial disparity in the size, shape or population of such district, then the Secretary of State may allocate portions of such area to two (2) or more districts; and

(e) In any allocation of area or correction of descriptions made pursuant to this section, the Secretary of State shall, consistent with the foregoing standards, preserve the contiguity and compactness of districts and avoid the unnecessary division of political subdivisions.

(3) Copies of such orders shall be filed by the Secretary of State in his own office and in the offices of the affected commissioners of election and registrars. The Secretary of State may adopt reasonable rules regulating the procedure for applications for orders under this section in the manner of serving and filing any notice or copy of orders relating hereto.

(4) Upon the filing of such an order, the description of any affected district shall be deemed to have been corrected in the manner provided in such order to the full extent as if such correction had been contained in the original description set forth in this act.

Section 4. The Attorney General of the State of Mississippi is hereby directed to exhaust all options under Section 5 of the Voting Rights Act of 1965, as amended and extended, in seeking to effectuate this act.

Section 5. This act shall take effect and be in force if it is finally effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.

Approved: April 21, 1978

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